REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP

TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA:

Submitted by:

The Advisory Group Appointed under the Civil Justice Reform Act

April 26, 1993

REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP

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ANALYSIS OF THE CASELOAD AND RECOMMENDATIONS FOR CIVIL CASE MANAGEMENT

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TABLE OF CONTENTS

APPENDICES

REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA[1]

I. Description of the Court

A. The Court is described in detail in United States District Court, Southern District of Alabama Five-Year Profile 1987 - 1991 (Appendix D, pages 31-94). The profile was developed by officials of the Office of the United States District Court Clerk: John V. O'Brien, Clerk of the Court; Betty J. Turner, Chief Deputy Clerk; and Lawrence P. Strahan, Operations Manager.

B. There is no special statutory status.

II. Assessment of Conditions in the District

A. Condition of the Docket

1. **Condition of the Civil and Criminal Dockets**

There were a total of 1392 civil and criminal cases filed in SY1992. Of those filings, 1148 (83%) were civil cases and 244 (17%) were criminal cases. In SY1991 (the last period for which this specific data was available at the time of the analysis), there was an average of 1.87 criminal defendants per case.

From SY1987 through SY1992, the number of civil cases going to trial (jury or non-jury trial) declined from 14% to 5%. See Graph 44, Appendix E, page 137.

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[1]This Report follows the format contained in the "Judicial Conference Recommended Format for Advisory Group Reports," issued August, 1991 (see Appendix B, pages 14-17 for full text).

Detailed information and analysis is provided in An Analysis of the Caseload of the United States District Court for the Southern District of Alabama (hereinafter referred to as Analysis) in Appendix E.

Prisoner Petitions, Contracts, Torts, and Civil Rights actions are the most frequently filed types of civil cases. Narcotics, Fraud, Weapons and Firearms, and Marijuana/Controlled Substances cases comprise the bulk of the criminal docket.

In SY 1992, the Life Expectancy was approximately 10 months for civil cases and approximately 9 months for criminal cases.

2. **Trends in Case Filings and Demands on Court Resources**

Data from the Judicial Workload Profiles from SY1981 through SY1992 were used to determine the condition of the docket and any changes that may have occurred. The nature of the docket has changed during the past twelve years. The percentage of criminal cases has grown from a low of 5% in SY1983 to 17% in SY1992. The primary impact of the changing nature is the fact that criminal cases require priority management measures because of statutory speedy trial provisions. A detailed examination of the condition of the overall docket, the civil docket, and the criminal docket are provided in the Analysis (Appendix E).

3. **Trends in Court Resources**

The Court is currently utilizing three active and three senior judges. An analysis of the impact of filings per judgeship in Appendix E (pages 126-128) illustrates how the filings per

judgeship would change if the senior judges were no longer available.

B. Cost and Delay

1. **Examination of Cost and Delay in Civil Litigation**

An examination of historical data from the Statistical Analysis and Reports Division (SARD), Administrative Office of the United States Court, indicates that the Southern District of Alabama is experiencing a significant decline in the life expectancy of civil cases, while the life expectancy of criminal cases remains unchanged. This analysis would indicate that costs and delays are not significant issues at this time. A detailed examination of this data is provided in Appendix E, pages 109-119.

Civil cases in the Southern District of Alabama have been disposed of faster than the national average. The national average case life expectancy is 12 months (see page 14, Guidance to Advisory Groups Memo SY92 Statistics Supplement, Sept. 21, 1992). The life expectancy of civil cases in SY1992 was approximately 10 months in the Southern District of Alabama.

2. **This study has not indicated unreasonable cost and delay in the Southern District Court.** Since implementing a master annual calendaring system to deal with the increasing criminal caseload (see Appendix D, page 57, Internal Operating Policy on Disposition of Criminal Cases and Appendix E, page 110) the time for disposition of civil cases has declined steadily. It is anticipated that recent amendments and proposed changes to the Federal Rules of Civil Procedure will further increase the

efficiency of civil case management in the Court.

Amendments to the Federal Rules of Civil Procedure which became effective December 1, 1992, have had a direct effect on cost reduction of litigation in the federal district court. The amendment to Rule 45, in particular, has had a significant impact. This rule eased the burden on inter-district law practice by allowing attorneys, as officers of the court, to issue subpoenas. This change alleviates the cumbersome and expensive previous practice of having foreign deposition subpoenas issued by district court clerks throughout the country. In addition, the amendments allow for easier discovery of documents and property in the possession of third parties.

Sweeping changes to the Federal Rules of Civil Procedure were adopted by the Judicial Conference in September, 1992. It is probable that these changes will become effective on December 1, 1993. These rules changes pertain to service and discovery and will radically alter civil litigation practice in federal district court. Briefly stated, the purpose behind the proposed rule changes is to recognize the court's affirmative duty to ensure that civil litigation is resolved fairly and efficiently and to share this responsibility with the attorneys.

Inasmuch as the proposed rule changes adopted by the Judicial Conference in September, 1992, will have a significant impact on both costs and expediency in the flow of cases in federal district court, it is vital that federal court practitioners and administrators be thoroughly familiar with these changes and

prepare for the time when those rules will be in effect.

The 1992 amendments to the FRCP and proposed changes to the FRCP are in Appendix G, beginning at page 180.

III. Recommendations and their Bases

A. This study has identified several matters that have a significant impact on case management in the Southern District. In framing its recommendations to the Court, the Advisory Group focused on the following issues to be addressed in the Plan the Group recommends to the Court:

1. **Impact of the Master Calendar System:** Trend analysis of life expectancy of civil cases since the master annual calendar system was implemented in October, 1990, indicates a significant and continuing decline. As indicated in Appendix E, page 111, the average life expectancy of civil cases has been dropping by an average of .50 months for each month the master calendar has been in use.

2. **Identification and Monitoring of Types of Cases Showing Significant Growth:** Trend analysis has identified certain types of civil and criminal cases that, because of their exponential growth rate, may require special attention in the future. These types of cases are Prisoner Petitions (Graph 9, Appendix F, page 157), Civil Rights (Graph 16, Appendix F, page 164), Narcotics (Graph 26, Appendix F, page 174), Marijuana and Controlled Substances (Graph 25, Appendix F, page 173), and Weapons and Firearms (Graph 22, Appendix F, page 170).

3. **Impact of Senior Judges:** This study demonstrates the significant impact of senior judges on caseload management by indicating the increase in pending cases per judge that would exist if the senior judges were not available. See Appendix E, pages 126-128.

4. **Role of Magistrate Judges:** This report documents the substantial role that magistrate judges play and indicates interest in further exploration of how to maximize their contributions to overall caseload management.

5. **Impact of Amendments and Proposed Changes in the Federal Rules of Civil Procedure Discovery Practices by Litigants and Attorneys.** Given general agreement that discovery is a very significant factor in cost and time in civil litigation, the manner in which civil procedure rules changes are implemented by the Court and practiced by parties and attorneys should have a substantial impact on litigation management.

6. **Role of Alternative Dispute Resolution:** Conventional forms of alternative dispute resolution (primarily arbitration and mediation) are increasingly popular methods of easing the judicial workload in many jurisdictions. Given the current favorable state of civil litigation management in the Southern District of Alabama, however, there is less urgency to implement formal ADR programs in this Court. Nevertheless, it would be prudent to examine the experiences of other judicial systems - both federal and state - with court-annexed ADR programs, especially mediation programs that facilitate settlement negotiations through the intervention of

neutral third parties. Should ADR programs be adopted by the Court, the cooperation of litigants and attorneys would be essential.

7. **Consideration of Civil Motion Docket System and Strategies to Reduce Unnecessary Paperwork.** Attorneys on the Advisory Group expressed an interest in exploring ways to obtain early rulings on dispositive motions through a motion docket system and examining the requirement of filing legal briefs with all motions.

8. **Emphasis on Quality Outcomes in the Court.** The Advisory Group expresses its sense that increased efficiency in terms of time and cost reduction should not come at the expense of adequate time and resources for full consideration of civil claims brought in the Court.

B. Contributions to be made by the Court, the litigants, and their attorneys in addressing the recommended issues are discussed throughout III.A. and III.C.

C. Analysis of the issues that have a significant impact on civil litigation case management in the Southern District of Alabama takes into consideration the six statutory principles and techniques for litigation management cost and delay reduction (§473 of the Act) in the following respects:

1. Systematic, differential treatment of civil cases.

The implementation of the master calendar system has been an effective response to the need for systematic, differential treatment of civil cases. As this study indicates, the life expectancy of civil cases was growing until the calendar was put

into effect. Since that time, there has been a significant downward trend in life expectancy of all civil cases. In addition, continuing trend analysis of civil litigation by nature of case will enable court management to identify areas that require special attention and develop appropriate strategies.

2. Early and ongoing judicial control of the pretrial process, including case planning, early and firm trial dates, control of discovery, and deadlines for motions.

The recommendations take into account these matters in that they have been derived from analysis of the impact of the master calendar on case life expectancy, trend analysis of types of case filings that indicate exponential growth rates, analysis of increasing pretrial dispositions, analysis of senior judges' case loads, and analysis of the role and impact of magistrate judges.

3. Discovery/case management conference(s) for complex or other appropriate cases, at which the judicial officer and the parties explore the possibility of settlement; identify the principal issues in contention; provide, if appropriate, for staged resolution of the case; prepare a discovery plan and schedule; and set deadlines for motions.

The analyses referred to immediately above (# 2) apply to this principle as well. In addition, these matters are addressed at Rule 16 conferences or through responses to Notice of Rule 16 consultations by mail. Such cases are identified and appropriate discovery and scheduling orders are entered. See FRCP 16(b) Discovery and Scheduling Order (Appendix G, page 249). See, also,

charts and compliance outlines in Appendix D, section 5.

4. Encouragement of voluntary exchange of information among litigants and other cooperative devices.

This principle is addressed through many of the same strategies and processes referred to in the previous principal (# 3). The continued involvement of magistrate judges, whose role is described in Appendix D, pages 48-56, and the continuing practices regarding Rule 16(b) discovery and scheduling orders accomplish this objective.

5. Prohibition on discovery motions unless accompanied by certification by the moving party that a good-faith effort was made to reach agreement with opposing counsel.

The provisions of the Rule 16(b) Discovery and Scheduling Order (Appendix G) address this principal. In paragraph 4 on page 2 of the Order counsel are required to confer or make a good faith effort to confer to resolve by agreement the issues in dispute before filing certain discovery motions. Active enforcement of this provision accomplishes this case management strategy.

6. Authorization to refer appropriate cases to alternative dispute resolution programs.

This assessment of the condition of the docket and current caseload management efficiency court has not indicated an urgent need for formal alternative dispute resolution (ADR) programs in this district court. The percentage of civil cases terminated before pre-trial has risen markedly since 1987. In 1992, 78.5% of civil cases terminated before pre-trial, compared to

28.3% in 1987. In 1987 over 14% of the civil cases filed were tried. In 1992, just over 5% of the civil cases proceeded to trial. See Graph 44, Appendix E, page 137.

Consistently setting pretrial hearings and entering discovery orders are examples of practices that encourage parties to consider settlement at early stages of litigation. It was suggested by some attorneys on the Advisory Group that the act of setting cases for an early trial date in itself encourages the parties to accelerate attempts to settle.

Settlement efforts have been further facilitated in some jurisdictions through formal court-annexed mediation programs. As indicated in Section III.A.6. (page 6) of this Report, a feasibility study of mediation may be appropriate in response to changing litigation trends.

Continuing trend analysis can provide court management with information to determine which, if any, types of cases may require special attention in the form of formal ADR programs in the future. Several perspectives and more information on ADR that was provided by members of the Advisory Group are presented in Appendix H (page 252.

D. Recommendations by the Advisory Group

The Advisory Group recommends that the Court adopt a Plan that formalizes and continues the successful litigation management techniques presently being practiced. The Advisory Group further recommends that the Court include in its Plan provisions for on-going monitoring of caseload demands and for studying the feasibility of developing court-annexed mediation programs. Given the relationship between the eight significant issues identified in III.A. and the principles of litigation management described in the Civil Justice Reform Act, the Advisory Group recommends that the Court's Plan focus on these issues.

The full text of the Advisory Group's Recommended Cost and Delay Reduction Plan is set forth in Appendix C, beginning at page 24.

APPENDIX A

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APPENDIX B

**THE ADVISORY GROUP REPORT TO THE COURT:
RECOMMENDED FORMAT AND SUMMARY
OF STATUTORY REQUIREMENTS**

The Civil Justice Report Act of 1990 requires each district court advisory group to submit to the court a report of its work. This report will be reviewed by several different bodies, and thus the Judicial Conference Committee on Court Administration and Case Management recommends that to the extent possible advisory groups follow the same format in preparing their reports. This will greatly facilitate the work of the courts, the circuit judicial councils and review committees, the Judicial Conference, the Federal Judicial Center, and the Administrative Office. Those who use your reports will be most appreciative.

RECOMMENDED FORMAT FOR ADVISORY GROUP REPORTS

Please consider using the following outline in preparing your report to the court. The examples given are illustrative only. Each advisory group will decide which issues it must address for its district. We hope, however, that the group will address those issues in the basic sequence outlined below, although you may well find that the name of your analysis requires integrating the treatment of topics designated by arabic numbers as well as those listed under III.

I. Description of the Court
   A. Number and location of divisions; number of district judgeships authorized by 28 U.S.C. § 133; number of magistrate judgeships authorized by the Judicial Conference (use II.A.3 to comment on judicial vacancies and II.B.2 to comment on the consequences of these vacancies for cost and delay)
   B. Special statutory status, if any (e.g., pilot court, early implementation district)

II. Assessment of Conditions in the District
   A. Condition of the Docket
      1. What is the "condition of the civil and criminal dockets" (28 U.S.C. § 472(c)(I)(A))?
      2. What have been the "trends in case filings and in the demands being placed on court resources (§ 472(c)(I)(B))?
      3. What have been the trends in court resources (e.g., number of judgeships, vacancies)? (Use II.B.2 to commend on the impact of these trends and III.A to make recommendations regarding the need, if any, for additional resources.)

B. Cost and Delay
   1. Is there excessive cost and delay in civil litigation in this district? What is the supporting evidence for the group's finding?
   2. If there is a problem with cost and delay, what are its "principal causes" (§ 472(c)(I)(C))?
      a. How are cost and delay in civil litigation affected by the types of cases filed in the district?
      b. What is the impact of court procedures and rules (e.g., case scheduling practices; motions practice; jury utilization; alternative dispute resolution procedures such as arbitration and mediation)?
      c. What is the effect of court resources (numbers of judicial officers; method of using magistrates; court facilities; court staff; automation)?
      d. How do the practices of litigants and attorneys affect the cost and pace of litigation (e.g., discover and motion practice; relationships among counsel; role of clients)?
      e. To what extent could cost and delay be reduced by a better assessment of the impact of legislation and of actions taken by the executive branch (§ 472(c)(I)(D))?

III. Recommendations and Their Basis
   A. State the "recommended measures, rules, and programs" (§ 472(b)(3)), such as recommended local rules, dispute resolution programs, or other measures, and for each explain how it relates to an identified condition and how it would help the court reduce excessive cost and delay.
   B. Explain how the "recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys" (§ 472(c)(3)).
   C. Explain (as required by § 472(b)(4)) how the recommendations comply with § 473, which requires the court, when formulating its plan, to consider six principles and six techniques for litigation management and cost and delay reduction.
   D. Make a recommendation that the court develop a plan or select a model plan and state the basis for that recommendation (§ 472(b)(2)). If the advisory group has drafted a formal plan, please attach it as appendix C. If the recommendations stated under III.A serve as the recommended plan, please make this clear at III.A.

Appendices
   A. Membership of the Advisory Group (e.g., list of members, their affiliation, name of reports(s) and chair)

B. Operating procedures (e.g., how group was organized, methods used to collect data on caseload and on causes of cost and delay, copies of forms used for collecting information)
C. Cost and Delay Reduction Plan (if a formal plan is part of the report, please include it here)
Add any other appendices required by the advisory group's analysis and recommendations.

SUMMARY OF STATUTORY REQUIREMENTS

The Civil Justice report Act of 1990 requires the advisory group to submit a report to the court (§ 472). The statute, which requires that the report be made available to the public, specifies the content of the report:

1. The report must assess each of the following (28 U.S.C. § 472(b)(I)):
   a. the condition of the civil and criminal dockets;
   b. trends in case filings and demands on the court's resources;
   c. the principal causes of cost and delay in civil litigation; and
   d. the extent to which cost and delay could be reduced by better assessment of the impact of new legislation.
2. The report must state the basis for its recommendation that the court develop a plan or select a model plan (§ 472(b)(2)).
3. The report must include recommended measures, rules, and programs (§ 472(b)(3)).
4. The report must provide an explanation of the manner in which the recommended plan complies with § 473 (consideration of the principles and techniques of litigation management and cost and delay reduction) (§ 472(b)(4)).

Each district court is required by the statute to implement a "civil justice expense and delay reduction plan" (§ 471). The court may develop its own plan or it may adopt a model plan developed by the Judicial Conference of the United States. In either instance, the chief judge of the district must (§ 472(d)) submit the plan *and the report* prepared by the advisory group to
1. the director of the Administration Office of the U.S. Courts;
2. the judicial council of the circuit in which the district is located; and
3. the chief judge of each district court in the circuit.

The district court's plan and the advisory group's report will then be reviewed by the following two bodies:

1. a committee made up of each district chief judge in the circuit and the chief judge of the court of appeals for that circuit, who may suggest that additional actions be taken to reduce cost and delay in civil litigation (§ 474(a)(I)); and
2. the Judicial Conference, which may request a district court to take additional action of it "has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group" (§ 474(b)).

By December 1, 1994, the Judicial Conference must prepare a comprehensive report on all the plans (§ 479(a)), which is to be submitted to the district courts and to the Committees on the Judiciary of the Senate and the House of Representatives. The directors of the Federal Judicial Center and the Administrative Office may make recommendations regarding this report to the Judicial Conference.

A special requirement is specified for the Early Implementation Districts
(§ 482(c)(3)-(4)). By June 1, 1992, the Judicial Conference must prepare a report on the plans developed by these courts. This report, along with the plans developed by the courts and the reports prepared by the advisory groups, must be transmitted by the Administrative Office to the district courts and the Committees on the Judiciary of the Senate and the House of Representatives.

July 24, 1992

RE: Request for Preliminary Information for Civil Justice Reform Act Advisory Group

Dear :

In preparing the next phase of our report for the Advisory Group, we seek your observations and insights regarding civil litigation management in the United States District Court for the Southern District of Alabama. To that end, we would like to schedule an interview with each of the practicing attorneys on the Advisory Group.

To facilitate this process, we have prepared an instrument to obtain preliminary information from your perspective. The interview will be an opportunity to follow up on key points that emerge from the attorneys' responses.

To preserve respondents' confidentiality, no response, either written or verbal, will be attributed by name or other readily identifiable means without express written consent.

We will contact your office in the next few days to schedule an appointment during the latter part of August. So that we may review the preliminary information before the interview, we would appreciate your returning the enclosed form by August 12.

Thank you for your cooperation. If you have any questions about the instrument, please contact us at the University of South Alabama.

Very truly yours,

Robert A. Shearer Warren A. Beatty
Consultants to the Advisory Group

Enclosure

TO: Attorneys Serving on Civil Justice Reform Act Advisory Group

Please respond as you deem appropriate to the following items and return in the enclosed envelope by August 12, 1992. Although your responses will be included in a summary manner in a report to the Advisory Group, no individual respondent will be identified by name without consent.

1. How many years have you practiced in the U.S. District Court for the Southern District of Alabama?

2. In approximately how many civil cases per year are you involved as: plaintiff's counsel _____ ; defendant's counsel _____ ?

3. In what types of civil cases are you usually involved?

4. Based upon your experience and observations, what aspect(s) of civil litigation is/are:

(a) most costly?

(b) most time consuming?

5. What do you perceive to be the principal causes of any unusual cost and/or time consumption you may have experienced or observed in civil litigation?

6. What suggestions could you make to reduce the cost and time spent on various aspects of civil litigation?

7. Do you consider the use of expert witnesses a significant cost in civil litigation? If so, what is the average dollar amount expended for expert witnesses?

8. What particular aspects of discovery are most costly and time-consuming?

9. What suggestions could you make to reduce the cost and time spent on discovery?

10. In your experience, what court management techniques have been particularly effective in reducing the cost and time of civil litigation?

11. What court management techniques, if any, have not been effective?

12. What suggestions do you have for improving these management techniques?

13. Please estimate the percentage of time spent on the following phases of litigation in cases that are settled before trial:

a) Pleading

b) Discovery

c) Conferences

d) Research

e) Hearings

f) Other

14. Please estimate the percentage of time spent on the following phases of litigation in cases that were tried to conclusion:

a) Pleading

b) Discovery

c) Conferences

d) Hearings

e) Trial

f) Other

15. In jury trial cases, how much time is typically spent on jury selection?

16. Please describe the frequency and effectiveness of any forms of alternative dispute resolution in which you have been involved with respect to matters pending in the federal district court.

17. In your opinion, how would alternative dispute resolution affect litigation management in the federal district court?

18. What is your perception of the impact of pro se litigation on caseload management?

19. Please make any additional comments, suggestions, or observations you believe would be helpful in assessing and enhancing the effectiveness of caseload management in the federal district court.

APPENDIX C

RECOMMENDED COST AND DELAY REDUCTION PLAN

The Advisory Group has found no evidence of undue cost and delay in civil litigation in the United States District Court for the Southern District of Alabama. Indeed, this analysis indicates that the Court disposes of its civil caseload more rapidly than the national average and that the life expectancy of civil cases has been decreasing each month since October, 1990. This efficiency in disposition of civil cases has been achieved while essentially maintaining an unchanged disposition rate for the rapidly growing criminal docket, including the many cases involving multiple defendants.

As detailed in the Advisory Group's Report, the present condition of the docket is attributable to several factors, both internal and external. Clearly, the professionalism, foresight, and overall litigation management practices in the judicial and administrative offices of the Court have contributed greatly to controlling the docket. Other factors, such as somewhat fewer "complex" civil filings than the national average, have some impact on the rate of disposition. Changes in federal procedural rules, particularly those pertaining to discovery practices, promise to further control cost and time spent in civil litigation.

While acknowledging the achievements of Court management in expeditiously disposing of civil cases, the Advisory Group emphasizes that speedy termination of litigation should not in itself be the predominant goal of the judicial system. Prompt

dispositions, if pursued at the expense of quality of outcome, do not serve the interests or expectations of parties bringing their causes of action before the Court.

Anecdotal observations and suggestions to improve litigation management - particularly in the areas of discovery, pretrial orders, and alternative dispute resolution - have been made by various individuals interviewed during the course of the Advisory Group's study. Those observations and suggestions, many of which are the basis for Recommendation #7, are included in the Advisory Group report for the Court's consideration.

The analysis of trends in civil case filings and dispositions, which is the essence of the Advisory Group's report, has been based on data compiled by the Administrative Office of the United States District Court System and the Judicial Conference. Cooperative, innovative leadership from the federal district court judiciary - including full-time, senior status, and magistrate judges - is central to the effective management of the civil and criminal dockets. The Office of the Clerk of the Court is staffed by highly competent, conscientious professionals whose administration of Court functions, stewardship of resources, and ability to assemble, analyze, and report data is critical to efficient litigation management.

The Advisory Group recommends the Court adopt a Plan, supported by the information contained in the Report, that essentially continues, formalizes, expands, and monitors the successful litigation management practices currently existing in

the United States District Court for the Southern District of Alabama. As indicated in the Report, these recommendations are consistent with the principles and techniques for litigation management and cost and delay reduction set forth in § 473 of the Civil Justice Reform Act.

Recommendation # 1

Continue to utilize the Master Annual Calendar System implemented in October, 1990.

Statistical analysis clearly indicates a significant reduction in the average time from filing to disposition of civil cases since the Court adopted its current Internal Operating Policy on Disposition of Criminal Cases, described in Appendix D, pages 57-66. During this period the time for disposition of criminal cases, many of which involve multiple defendants, has remained stable. Although this procedure was enacted in direct response to a need for more efficient management of the increasing criminal caseload, the impact on the civil docket, as anticipated by the Court, has been significant.

Recommendation # 2

Identify and monitor significant growth in complex case filings on a monthly basis using trend analysis techniques.

Monthly data generated through the Statistical Analysis and Reports Division (SARD) of the Administrative Office of the United States Court System can be analyzed to determine exponential growth

trends on an ongoing basis. With regular access to this kind of information, Court officials can allocate resources and adjust schedules in anticipation of increased demands. Additionally, this type of trend analysis will allow the Court to monitor the impact of new legislation and/or executive action.

Recommendation # 3

The Advisory Group commends the senior-status judges and acknowledges the significant positive impact their efforts have on the overall judicial workload of the Southern District. The Advisory Group recommends the continued maximum utilization of the experience and expertise of available senior judges and support of their contributions to case management.

Recommendation # 4

The Advisory Group recognizes the substantial, documented contributions of the magistrate judges and recommends they continued to be utilized to the fullest extent allowed by law.

Recommendation # 5

The Advisory Group recommends the Court take reasonable measures to ensure that counsel and litigants cooperate in implementing the new and amended rules of civil procedure that are designed to expedite the discovery process.

Compliance by litigants and their counsel with current local practice standards and FRCP changes should have a positive impact

on both cost and time in civil litigation.

Recommendation # 6

The Advisory Group recommends that the Court consider the feasibility of adopting mediation as an alternative means of resolving certain disputes by:

(a) identifying types of cases that are particularly susceptible to resolution by non-judicial means and whose referral to mediation would have a positive impact on the overall cost and efficiency of caseload management, and;

(b) establishing guidelines and procedures to implement whatever mediation program may be adopted.

Court-annexed, mandatory alternative dispute resolution programs - primarily arbitration and mediation - have been adopted in many jurisdictions to relieve dockets overwhelmed by criminal cases and complex civil litigation. Given the data in the Southern District indicating a significant decline in life expectancy of all civil cases, the diminishing percentage of civil cases going to trial (5.1% in SY 1992), and the overall condition of the docket, there is no compelling evidence that extensive ADR measures are needed at this time to control cost and time. Ongoing monitoring of filing and disposition trends will allow the Court to identify changing docket characteristics that warrant further consideration of these options.

It would be appropriate, however, for the Court to begin to examine the experiences of other jurisdictions with respect to

mediation programs, which are designed to facilitate voluntary settlement through a neutral third party. If the Court determines that mediation would be an effective alternative, the specific implementing mechanisms could be developed expeditiously.

Recommendation #7

The Advisory Group recommends the Court reconsider the use of some form of civil motion docket, especially with respect to dispositive motions, and consider ways to reduce paperwork requirements.

Early rulings on motions for dismissal and summary judgment obviously play a key role in the timely disposition of civil cases. Increased efficiency in management of the docket, therefore, should be realized through motion hearing practices that facilitate early rulings. To maximize use of time and reduce paperwork, the Advisory Group recommends the Court - in concert with the appropriate committee(s)/section(s) of the Mobile Bar Association - review the current requirements with respect to filing supporting legal briefs with motions and consider (a) eliminating unnecessary filing requirements and/or (b) allowing attorneys themselves to elect whether or not to file such briefs.

Recommendation #8

While commending the Court for its efficient disposition of civil cases, the Advisory Group expresses its sense that quality of outcome rather than prompt disposition alone must be the overriding

objective of litigation management in the Southern District.

The Advisory Group believes that increased expediency in terms of time and cost reduction should not be pursued at the expense of adequate consideration of the causes of action brought to the Court. The Recommendation does not imply that this Court places higher priority on time and cost reduction than quality of outcome, but rather expresses the Advisory Group's concern that the management techniques and strategies called for in the Civil Justice Reform Act not be applied solely to achieve faster termination of civil litigation.

APPENDIX D

FIVE YEAR PROFILE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

The United States District Court of the Southern District of Alabama is composed of thirteen counties in the southern part of the state and is divided into two divisions, Northern Division and Southern Division. The Northern Division contains five counties--Dallas, Hale, Marengo, Perry and Wilcox and sits in Selma, Dallas County. The Southern Division contains eight counties--Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe and Washington and sits in Mobile, Mobile County.

The 1990 census reflects a total population of the district as being 677,454 as follows:

Southern Division:	
County	Population
Baldwin	98,280
Choctaw	16,018
Clarke	27,240
Conecuh	14,054
Escambia	35,518
Mobile	338,643
Monroe	23,968
Washington	16,694
Northern Division:	
Dallas	48,130
Hale	15,498
Marengo	23,084
Perry	12,759
Wilcox	13,568

It is estimated that the population of persons 18 years of age and over is 515,505, which persons would possibly be eligible to sit as prospective jurors in this court pursuant to this court's jury plan.

JUDICIAL OFFICERS:

Article III Judges:

Active Judges

Alex T. Howard, Jr., Chief Judge
Charles R. Butler, Jr.
Richard W. Vollmer, Jr.

Senior Judges:
W. Brevard Hand
Virgil Pittman
Daniel H. Thomas

Although Judge Hand has taken senior status, he still maintains as full a case load as the other active judges of this court, and also assists in criminal trials in this district. Judge Pittman and Judge Thomas are assigned 50% of the civil case load taken by the active judges with Judge Pittman trying both jury and non-jury civil cases and Judge Thomas electing to try only non-jury cases.

Judicial Staff: Each Active Judge and Senior Judge has a staff consisting of one secretary and two full-time law clerks. The only exception is Senior Judge Daniel H. Thomas who has one secretary, one full-time law clerk and one court bailiff. In addition, each active judge and Sr. Judge Hand are assigned an active court reporter. Sr. Judges Thomas and Pittman use contract court reporters in conducting their civil trials.

Magistrate Judges:
This district has three full-time Magistrate Judges who are appointed to 8-year terms and are eligible for reappointment at the end of a term, namely:

Magistrate Judge	Term of Appointment Expires
William E. Cassady	March 11, 1993
Bert W. Milling, Jr.	November 21, 1994
William H. Steele	December 3, 1998

Each Magistrate Judge is entitled to one secretary and one full-time law clerk. In addition, each Magistrate Judge uses the services of contract court reporters when conducting consent civil trials.

CLERK OF COURT AND STAFF:
The Clerk, John V. O'Brien, was appointed January 1, 1982. The Clerk's Office presently is authorized a staff of twenty-seven persons, as outlined on the attached Organizational Chart.

COURT CALENDAR:

This court operates under a master annual calendar and the 1992 court calendar was published and distributed in early September to facilitate advance scheduling. Under this court's master calendar, both criminal and civil juries are selected each month with one active judge presiding as the criminal judge and one active judge being his backup because of the number of criminal trials being tried each month. If the number of criminal cases requires additional judicial assistance, Sr. Judge Hand assists. The other active judge and Sr. Judge Pittman try civil jury cases

during that month as needed. The master calendar is so arranged each month that the backup judge rotates off criminal trials for the next month to allow him to tend to pending civil matters--jury or non-jury. The active judges have agreed to allow most civil maritime and social security cases to be assigned to Sr. Judges Thomas and Pittman.

CASE LOAD:

As of October 31, 1991, this district had a total of 1072 pending civil cases. On July 29, 1991 by order of the Multi-district Litigation Panel 201 asbestos cases assigned to only Judges Howard and Butler, were transferred to the Eastern District of Pennsylvania for further proceedings. All asbestos cases throughout the United States District Courts that were not set for trial, were transferred to the Eastern District Court of Pennsylvania by this Multi-district Litigation Panel Order for further handling up to and including possibly pretrial. After pretrial, however, these 201 asbestos cases could be returned to this district for trial purposes.

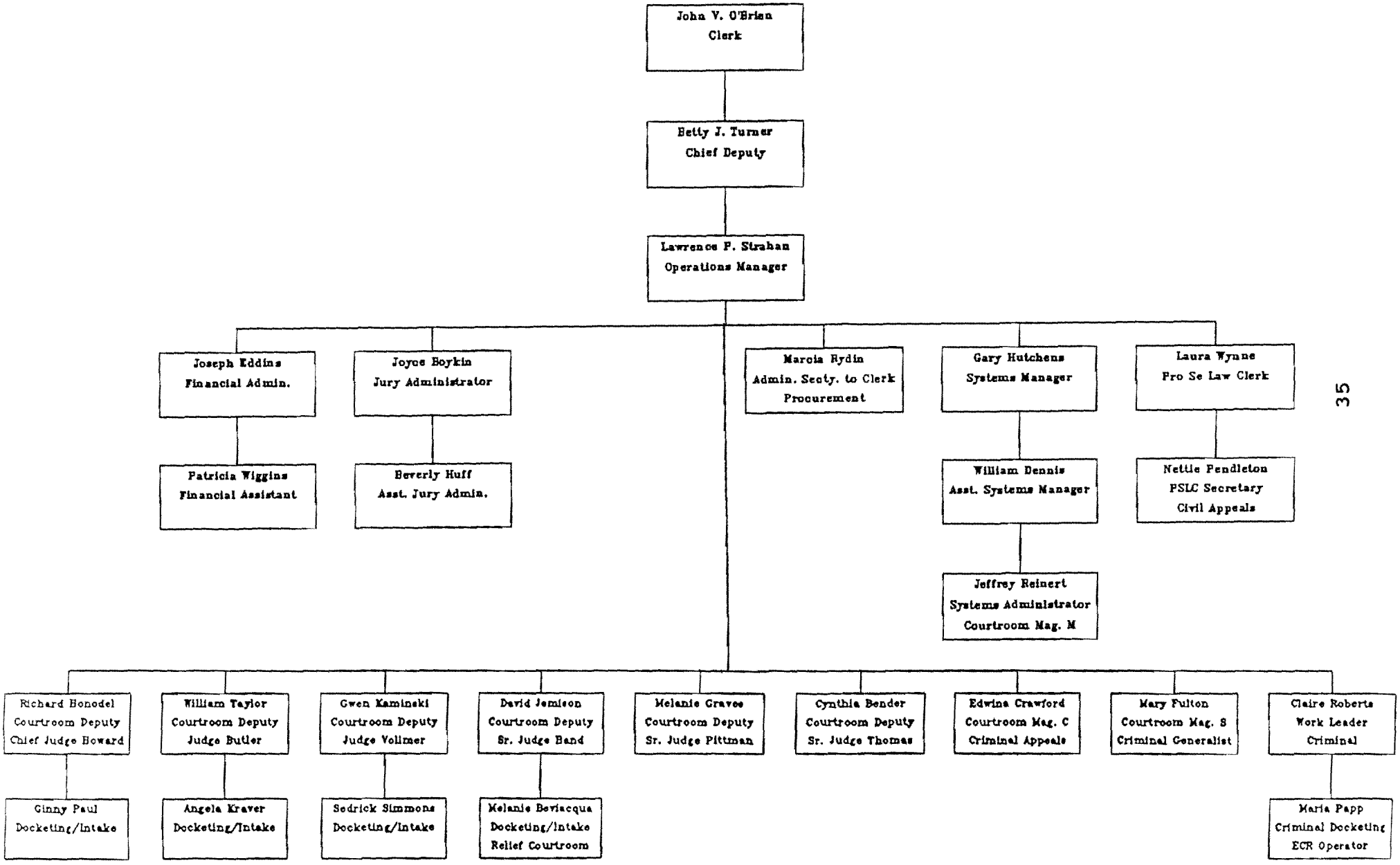
Without the assistance of our three senior judges, as shown in the Summary of Civil Cases attached, our backlog of civil cases would be considerably greater and the time frame for early disposition would be considerably increased.

1990 POPULATION
COUNTIES - SOUTHERN DISTRICT OF ALABAMA

County	Total Population	18 Years & Older	Males	Females
Baldwin County	98,280	72,747	47,741	50,539
Choctaw County	16,018	11,310	7,593	8,425
Clarke County	27,240	19,005	13,012	14,228
Conecuh County	14,054	10,136	6,639	7,415
Dallas County	48,130	33,025	21,937	26,193
Escambia County	35,518	26,051	17,477	18,041
Hale County	15,498	10,616	7,235	8,263
Marengo County	23,084	16,091	10,887	12,197
Mobile County	338,643	270,610	139,577	199,066
Monroe County	23,968	16,590	11,577	12,391
Perry County	12,759	8,757	5,940	6,819
Washington County	16,694	11,611	8,144	8,550
Wilcox County	13,568	8,956	6,312	7,256

Source: 1990 Census of Population and Housing. Summary Population and Housing Characteristics Alabama. U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census.

OFFICE OF THE CLERK OF COURT
SOUTHERN DISTRICT OF ALABAMA



Rev. 7/1/92

1992 COURT CALENDAR

JANUARY - DECEMBER

JANUARY '92

		01			HOLIDAY (NEW YEAR'S DAY)
			02	03	Pre-Trials or Special Settings
			02		Arraignments (Steele)
06					Criminal Jury Selection (Howard) (Vollmer Back-up)
	07				Civil Jury Selection(Butler/Sr.Judges)
		08			Arraignments (Steele)
		08			CVB (Mobile 9 A.M.) (Steele)
		08	09,	10	Criminal/Civil Trials
				10	CVB (Selma 9 A.M.) (Milling)
13	14	15	16	17	Criminal/Civil Trials
13	14	15	16	17	Criminal Pre-Trials (Milling)
		15			Arraignments (Steele)
20					HOLIDAY (KING'S BIRTHDAY)
	21,	22,	23,	24	Criminal/Civil Trials
	21,	22,	23,	24	Pleas/Sentencing (Butler)
			23,		Grand Jury Report (Cassady)
27	28	29	30	31	Criminal/Civil Trials
	[29]				Judges' Lunch Conference (12:00 - 2:00)

1992 Court Calendar
January - December 1992
Page Two

FEBRUARY '92

03					Cr. Jury Selection (Butler) (Howard back-up)
	04				Civil Jury Selection (Vollmer/Sr.Judges)
		05			Arraignments (Cassady)
		05,	06,	07	Criminal/Civil Trials
10	11	12	13	14	Criminal/Civil Trials
10	11	12	13	14	Criminal Pre-Trials (Steele)
		12			Arraignments (Cassady)
		12			CVB (Mobile 9 A.M.) (Cassady)
17					HOLIDAY (PRESIDENT'S DAY)
	18	19	20	21	Criminal/Civil Trials
	18	19	20	21	Pleas/Sentencing (Vollmer)
		19			Arraignments (Cassady)
			20		Grand Jury Report (Milling)
24	25	26	27	28	Criminal/Civil Trials
	[25]				Judges' Lunch Conference (12:00 - 2:00 P.M.)

MARCH '92

02	03				HOLIDAYS (MARDI GRAS)
		04	05	06	Pre-Trials or Special Settings
		04			Arraignments (Milling)
09					Criminal Jury Selection (Vollmer) (Butler back-up)
	10				Civil Jury Selection (Howard/Sr.Judges)
		11			Arraignments (Milling)
		11			CVB (Mobile 9 A.M.) (Milling)
		11	12	13	Criminal/Civil Trials
16	17	18	19	20	Criminal Pre-Trials (Cassady)
16	17	18	19	20	Criminal/Civil Trials
		18			Arraignments (Milling)
23	24	25	26	27	Criminal/Civil Trials
23	24	25	26	27	Pleas/Sentencing (Howard)
			26		Grand Jury Report (Steele)
30	31				Criminal/Civil Trials
	[31]				Judges' Lunch Conference (12:00 - 2:00)

APRIL '92

		01			Arraignments(Steele)
			02	03	Pre-Trials or Special Settings
06					Criminal Jury Selection (Howard) (Vollmer back-up)
	07				Civil Jury Selection (Butler/Sr.Judges)
		08	09	10	Criminal/Civil Trials
		08			Arraignments (Steele)
		08			CVB (Mobile 9 A.M.) (Steele)
				10	CVB (Selma 9 A.M.) (Steele)
13	14	15	16	17	Criminal/Civil Trials
13	14	15	16	17	Criminal Pre-Trials (Milling)
		15			Arraignments (Steele)
20	21	22	23	24	Criminal/Civil Trials
20	21	22	23	24	Pleas/Sentencing (Butler)
			23		Grand Jury Report (Cassady)
27	28	29	30		Criminal/Civil Trials
	[28]				Judges' Lunch Conference (12:00 - 2:00)

MAY '92

				01	NATURALIZATION DAY, 11 A.M. (Butler or Vollmer)
				01	Pre-Trials or Special Settings
04	05	06			11th Circuit Judicial Conference
			07		Arraignments (Cassady)
				08	Pre-Trials or Special Settings
11					Criminal Jury Selection (Butler) (Howard back-up) (Hand back-up for Jury Selection only)
	12				Civil Jury Selection (Vollmer/Sr.Judges)
11	12	13			Chief Judges' Conference--Denver
11	12	13	14	15	Criminal Pre-Trials (Steele)
		13			Arraignments (Cassady)
		13			CVB (Mobile 9 A.M.) (Cassady)
		13	14	15	Criminal/Civil Trials
18	19	20	21	22	Criminal/Civil Trials
18	19	20	21	22	Pleas/Sentencing (Vollmer)
		20			Arraignments (Cassady)
			21		Grand Jury Report (Milling
25					HOLIDAY (MEMORIAL DAY)
	26	27	28	29	Criminal/Civil Trials
	[26]				Judges' Lunch Conference (12:00--2:00)

JUNE '92

01					Criminal Jury Selection (Vollmer) (Butler back-up)
	02				Civil Jury Selection (Howard/Sr.Judges)
		03			Arraignments (Milling)
		03	04	05	Criminal/Civil Trials
08	09	10	11	12	Criminal/Civil Trials
		10			Arraignments (Milling)
		10			CVB (Mobile 9 A.M.) (Milling)
15	16	17	18	19	Criminal/Civil Trials
15	16	17	18	19	Criminal Pre-Trials (Cassady)
		17			Arraignments (Milling)
22	23	24	25	26	Criminal/Civil Trials
22	23	24	25	26	Pleas/Sentencing (Howard)
			25		Grand Jury Report (Steele)
29	30				Pre-Trials or Special Settings
	[30]				Judges' Lunch Conference (12:00 - 2:00)

JULY '92

		01,	02		Pre-Trials or Special Settings
		01			Arraignment (Steele)
				03	HOLIDAY (INDEPENDENCE DAY)
06					Criminal Jury Selection (Howard) (Vollmer back-up)
	07				Civil Jury Selection (Butler/Sr.Judges)
		08			Arraignments (Steele)
		08			CVB (Mobile 9 A.M.)(Steele)
		08	09	10	Criminal/Civil Trials
				10	CVB (Selma 9 A.M.) (Milling)
13	14	15	16	17	Criminal/Civil Trials
13	14	15	16	17	Criminal Pre-Trials (Milling)
		15			Arraignments (Steele)
20	21	22	23	24	Criminal/Civil Trials
20	21	22	23	24	Pleas/Sentencing (Butler)
			23		Grand Jury Report (Cassady)
27	28	29	30	31	Criminal/Civil Trials
	[28]				Judges' Lunch Conference (12:00--2:00)

AUGUST '92

03					Criminal Jury Selection (Butler) (Howard back-up)
	04				Civil Jury Selection (Vollmer/Sr.Judges)
		05	06	07	Criminal/Civil Trials
		05			Arraignments (Cassady)
10	11	12	13	14	Criminal/Civil Trials
10	11	12	13	14	Criminal Pre-Trials (Steele)
		12			Arraignments (Cassady)
		12			CVB (Mobile 9 A.M.) (Cassady)
17	18	19	20	21	Criminal/Civil Trials
17	18	19	20	21	Pleas/Sentencing (Vollmer)
		19			Arraignments (Cassady)
24	25	26	27	28	Criminal/Civil Trials
			27		Grand Jury Report (Milling)
	[25]				Judges' Lunch Conference (12:00 - 2:00)
31					Criminal Jury Selection (Vollmer) (Butler back-up)

SEPTEMBER '92

	01				Civil Jury Selection (Howard/Sr.Judges)
		02	03	04	Criminal/Civil Trials
		02			Arraignments (Milling)
07					HOLIDAY (LABOR DAY)
	08	09	10	11	Criminal/Civil Trials
		09			Arraignments (Milling)
		09			CVB (Mobile 9 A.M.)(Milling)
14	15	16	17	18	Criminal/Civil Trials
14	15	16	17	18	Criminal Pre-Trials (Cassady)
		16			Arraignments (Milling)
		16	17	18	Magistrate Judges Conference
21	22	23	24	25	Criminal/Civil Trials
21	22	23	24	25	Pleas/Sentencing (Howard)
			24		Grand Jury Report (Steele)
28	29	30			Pre-Trials or Special Settings
	[29]				Judges' Lunch Conference (12:00 - 2:00)

OCTOBER '92

			01	02	Pre-Trials or Special Settings
05					Criminal Jury Selection (Howard) (Vollmer back-up)
	06				Civil Jury Selection (Butler/Sr.Judges)
		07	08	09	Criminal/Civil Trials
		07			Arraignments (Steele)
				09	CVB (Selma 9 A.M.) (Steele)
12					HOLIDAY (COLUMBUS DAY)
	13	14	15	16	Criminal/Civil Trials
	13	14	15	16	Criminal Pre-Trials (Milling)
		14			Arraignments (Steele)
		14			CVB (Mobile 9 A.M.) (Steele)
19	20	21	22	23	Criminal/Civil Trials
19	20	21	22	23	Pleas/Sentencing (Butler)
		21			Arraignments (Steele)
			22		Grand Jury Report (Cassady)
26	27	28	29	30	Criminal/Civil Trials
	[27]				Judges' Lunch Conference (12:00--2:00)

NOVEMBER, '92

02					Criminal Jury Selection (Butler) (Howard back-up)
	03				No Jury Selection:Natl Election Day
		04			Civil Jury Selection (Vollmer/ Senior Judges)
			05	06	Criminal/Civil Trials
		04			Arraignments (Cassady)
09	10		12	13	Criminal/Civil Trials
		11			HOLIDAY (VETERANS DAY)
			12		Arraignments (Cassady)
			12		CVB (Mobile 9 A.M.)(Cassady)
16	17	18	19	20	Criminal/Civil Trials
16	17	18	19	20	Criminal Pre-Trials (Steele)
		18			Arraignments (Cassady)
			19		Grand Jury Report (Milling)
23	24	25			Pleas/Sentencing (Vollmer)
23	24	25			Criminal/Civil Trials
	[24]				Judges' Lunch Conference (12:00 - 2:00)
			26		HOLIDAY (THANKSGIVING DAY)
				27	ADMINISTRATIVE DAY OF LEAVE
30					Criminal Jury Selection (Vollmer) (Butler back-up)

DECEMBER, '92

	01				Civil Jury Selection (Howard/Sr.Judges)
	01	02	03	04	Criminal/Civil Trials
		02			Arraignments (Milling)
				04	NATURALIZATION DAY (Butler or Vollmer) (11:00 A.M.)
07	08	09	10	11	Criminal/Civil Trials
07	08	09	10	11	Criminal Pre-Trials (Cassady)
		09			Arraignments (Milling)
		09			CVB (Mobile 9 A.M.) (Milling)
14	15	16	17	18	Criminal/Civil Trials
14	15	16	17	18	Pleas/Sentencing (Howard)
		16			Arraignments (Milling)
			17		Grand Jury Report (Steele)
21	22	23			Criminal/Civil Trials
			24		Pre-Trials or Special Settings
				25	HOLIDAY (CHRISTMAS DAY)
28	29	30	31		Pre-Trials or Special Settings
	[29]				Judges' Lunch Conference (12:00 - 2:00)

INTRODUCTION TO CHAPTER 3 ("JURISDICTION") OF THE LEGAL MANUAL FOR UNITED STATES MAGISTRATE JUDGES

This new chapter of the Legal Manual for United States Magistrate Judges has been designed as a reference tool to assist the district courts in evaluating the most effective utilization of United States magistrate judges. It replaces chapter 3 of the Legal Manual and is being distributed to all magistrate judges, district judges and chief circuit judges.

The chapter provides district courts with a quick guide to the types of duties that magistrate judges may perform. It is also intended to assist local advisory groups charged with developing case management plans under the Civil Justice Reform Act and is being distributed to the chairs of those groups. In passing the Act, the Congress contemplated that the district courts would benefit from using magistrate judges to perform pretrial management duties in civil cases.

As the civil and criminal case load burdens of the district courts increase, the federal judiciary will be challenged to make ever greater use of the limited time of Article III judges. The federal magistrate judge system was established by the Congress as a flexible judicial resource precisely to assist district judges in meeting this challenge. It was intended by the Congress to "assist the district judge to the end that the district judge could have more time to preside at the trial of cases, having been relieved of part of his duties which require the judge to personally hear each and every pretrial motion or proceeding necessary to prepare a case for trial." S.REP.NO. 625, 94th Cong., 2d Sess. 5 (1976).

I. POLICY STATEMENTS

Judicial Conference Policy on the Full Utilization of Magistrate Judges

The Judicial Conference of the United States has encouraged the district courts to utilize magistrate judges fully. Most courts, in fact, now use their magistrate judges in civil cases to conduct pretrial proceedings and settlement conferences and to direct case management efforts. In so doing, they have increased the "time available to [Article III] judges for the careful and unhurried performance of their vital and traditional adjudicatory duties, with a consequent benefit to both efficiency and the quality of justice in the federal courts." The Federal Magistrates System, Report to the Congress by the Judicial Conference of the United States at 9 (1981), citing S.REP.NO. 625, 94th Cong., 2d Sess. 11 (1976).

The Magistrate Judges Committee of the Judicial Conference and the Administrative Office reported to the Federal Courts Study Committee in 1989 that:

> The magistrates system has operated for two decades. Yet within this relatively short span, it has become firmly established as an integral component of the federal judiciary. The members of the Judicial Conference of the United States, who deal directly with magistrates, have been staunch supporters of the system. The effectiveness of the system was also recognized formally by the investigative arm of Congress, the General Accounting Office. The only disappointment with the system has been the missed opportunities by a few courts to realize the "full benefits" of the system.
>
> The improved utilization of magistrates will always be a goal of the system. The challenge is to persuade judges to use magistrates fully .... Informing judges of the many different ways to use magistrates is essential in maintaining the vigor and success of the system. Report to the Subcommittee on the Structure of the Federal Courts of the Federal Courts Study Committee (May 1, 1989).

Congressional Preference on the Use of Magistrate Judges

The Congress has enhanced the office of United States magistrate judge over the past two decades, in response to both the increased case loads of the district courts and a growing confidence in the magistrate judge system. It clarified and expanded the statutory authority of magistrate judges in 1976 and 1979 to encompass: (1) all aspects of pretrial case management, and (2) the trial of civil cases with the consent of the litigants.

The General Accounting Office investigated the federal magistrate judge system in 1983 and reported to the Congress that it had "helped reduce the workload of Federal judges." It concluded, however, that "actions could be taken to better utilize magistrates which would further reduce the burden on district court judges." General Accounting Office, Potential Benefits of Federal Magistrates System Can Be Better Realized: Report to the Congress of the United States (July 8, 1983).

The Congress increased the salary and retirement benefits of magistrate judges (and bankruptcy judges) in the late 1980's to attract and retain highly qualified lawyers. In 1990 it changed the title of the office to United States magistrate judge and liberalized the procedures for obtaining the consent of the parties to have a magistrate judge dispose of a civil case with finality.

Recommendations of the Federal Courts Study Committee on the Use of Magistrate Judges

In its comprehensive review of the federal judiciary in 1990, the Federal Courts Study Committee concluded that "[t]he district courts clearly need the assistance of the magistrates in order for the judges to focus on those matters that require Article III attention." The Committee added that magistrate judges had helped "to keep the system afloat" and emphasized that the role of magistrate judges should continue to be flexible in nature, tailored to address the specific case load needs of each district court.

The Committee concluded, however, that confusion over the constitutional and statutory authority of magistrate judges had made some courts reluctant to take full advantage of the magistrate judge system. In particular, the far-reaching 1976 and 1979 jurisdictional amendments to the Federal Magistrates Act had raised questions regarding the limits on the authority of the courts to refer certain types of proceedings to magistrate judges.

The Federal Courts Study Committee recommended that a comprehensive jurisdictional review be undertaken of the duties assigned to magistrate judges, together with pertinent statutory and case law citations and an analysis of the legislative history of the Federal Magistrates Act. Report of the Federal Courts Study Committee, 80 (1990).

In response, the Judicial Conference authorized its Committee on the Administration of the Magistrate Judges System to oversee the study. A special subcommittee composed of District Judge William T. Hart of Chicago (Chairman), Circuit Judge John R. Gibson of Kansas City, Missouri, and District Judge Frederic N. Smalkin of Baltimore supervised the study, which is being conducted by the Magistrate Judges Division of the Administrative Office.

The attached document constitutes the first part of the study. It has been reviewed and approved by the full Magistrate Judges Committee. Additional work is proceeding on the legislative history of the Federal Magistrates Act and on constitutional issues.

II. GENERAL POLICY CONSIDERATIONS IN EVALUATING THE USE OF MAGISTRATE JUDGES

Knowledge of the full range of duties that may be referred to magistrate judges is the first step towards devising an effective district court plan for magistrate judge utilization. There are a number of additional factors that a court should take into account in evaluating its use of magistrate judges.

Magistrate Judges as Generalists

The jurisdiction exercised by a magistrate judge is that of the Article III district court itself, delegated by the district judges pursuant to local court rule or order. Magistrate judges may be used by the district court as it sees fit to handle virtually any court matter or proceeding, with the exception of the trial of felony cases.

The Congress explicitly rejected the idea of creating a "second tiered judicial officer" in establishing the office of magistrate judge. Rather, it fashioned a generalist position to serve as a supplemental judicial resource to the generalist district courts. The Congress, moreover, has expressed concern that the district courts not refer only particular types of cases to magistrate judges, which could lead to the development of a de facto "poor people's court." H.R.REP.NO. 287, 96th Cong., 1st Sess. 11 (1979).

The Federal Courts Study Committee, likewise, recognized the need to "safeguard against undermining the institutional 'supplementary' role of magistrates [and the] unintentional creation of a lower-tiered judicial office with separate and distinct responsibilities." Report of the Federal Courts Study Committee, at 79 (1990).

Accordingly, a district court should attempt to preserve the generalist character of the position of magistrate judge, recognizing, of course, the particular case load exigencies of the court and the individual talents of its magistrate judges.

Innovative Use of Magistrate Judges

In enacting and amending the Federal Magistrates Act, the Congress encouraged courts to use their magistrate judges innovatively. "Proposed subsection 636(b)(3) [of title 28, United States Code] provides for the assignment to a magistrate of any other duty not inconsistent with the Constitution and laws of the United States .... Under this subsection, the district courts would remain free to experiment in the assignment of their duties to magistrates ...." S.REP.NO. 625, 94th Cong., 2d Sess. 10 (1976); H.R.REP.NO. 1609, 94th Cong., 2d Sess. 12-13 (1976).

The District Court as a Whole Should Determine the Utilization of Magistrate Judges

While 28 U.S.C. Sec. 636 authorizes each district judge to designate a magistrate judge to perform various duties, references to magistrate judges should be made pursuant to local court rule or standing order. The utilization of magistrate judges should not be left entirely to the individual preferences of each district judge without considering the relative efficiency of a court's overall operations and its total judicial work load demands. The most successful models for magistrate judge utilization tend to occur in

those courts that structure their referral procedures to the needs of the court as a whole.

Tailoring the Use of Magistrate Judges to the Needs of the District Court

The ultimate decision on how to use magistrate judges is left by statute to the discretion of each district court. No ideal model of utilization exists. Nor can a single common method exist in light of the purpose of the magistrate judge system "to provide the federal district courts with flexibility to meet their varied and increasingly complex caseloads and improve access to justice on a district-by-district basis." S.REP.NO. 74, 96th Cong., 1st Sess. 4 (1979). With the rapidly increasing criminal caseloads of many district courts, however, there is a clear trend towards greater involvement of magistrate judges in civil case management.

III. REFERRAL OF SPECIFIC DUTIES TO MAGISTRATE JUDGES

Methods of Referral

- Many district courts specify in local rules or orders that certain categories of cases or matters (e.g., social security appeals, prisoner cases, or discovery motions) will be referred automatically to a magistrate judge upon filing.

- Some courts routinely assign all civil cases at filing both to a magistrate judge and an Article III judge. The magistrate judge conducts all, or most, pretrial proceedings and prepares a case for trial before the assigned district judge.

- In some districts magistrate judges are "paired" with specific district judges, and they conduct all proceedings referred by those judges. The advantage of this system is that the magistrate judges become well attuned to the needs and preferences of "their" judges. A disadvantage is that the work load of the magistrate judges is likely to become unbalanced where some district judges refer more matters to magistrate judges than other district judges.

- In some districts, the clerk of court assigns a matter to a magistrate judge on an ad hoc, random basis at the time the district judge makes the reference.

- In other districts, district judges are authorized to refer matters on an ad hoc basis to any magistrate judge of their choice.

- Where a particular magistrate judge has acquired an expertise in specific types of cases or proceedings, a court may tend to refer a greater number of such matters to that magistrate judge.

- The geographic location of a particular magistrate judge within the district (for example, close to a large military base, national park, or prison) may also determine the duties that a magistrate judge performs for the court.

- Finally, in some districts the court has designated a "chief" or "presiding" magistrate judge to manage references from the court and assure that the work load of the magistrate judges remains approximately equal.

Misdemeanor Cases and Initial Proceedings in Felony Cases

In virtually all districts, local rules authorize the automatic reference of misdemeanor cases, including petty offense cases, to magistrate judges. In addition, most courts assign magistrate judges all preliminary pretrial proceedings and matters in felony cases. These duties include initial appearances, issuance of search warrants and arrest warrants, detention hearings, preliminary examinations, and arraignments.

The volume of initial criminal proceedings conducted by magistrate judges has been increasing substantially, reflecting the large increases in felony case filings in many district courts. As a result, these proceedings - particularly detention hearings - are consuming a greater portion of the time of many magistrate judges. Accordingly, magistrate judges may have less time available to perform duties for the court under 28 U.S.C. Sec. 636(b) and (c).

Social Security Appeals and Prisoner Cases

Many courts refer social security appeals and prisoner cases automatically to magistrate judges. Whether these references are an efficient use of the court's overall judicial resources has been a subject of debate. Unless the parties in these cases consent to a magistrate judge entering a final order under 28 U.S.C. Sec. 636(c), the magistrate judge must prepare a written report and recommended disposition for a district judge. The district judge is not bound by the magistrate judge's findings and recommendations and may accept, modify, or reject them. The district judge, however, must make a de novo determination of those portions of the report to which a party objects.

Some courts have elected not to refer social security and prisoner cases routinely to magistrate judges because of a belief that such procedures are repetitive and add another layer of review. A Federal Judicial Center study on the utilization of magistrate judges, however, concluded that it was efficient for the courts to use magistrate judges in these cases despite the de novo standard of review. C. Seron, The Role of Magistrates: Nine Case Studies, 95-100 (Federal Judicial Center 1985). The FJ.C. study noted that district judges adopted the magistrate judges' findings

in a vast majority of these cases, and parties objected to the recommendations infrequently. As a result, district judges who relied heavily on magistrate judges in these cases were relieved of a large portion of work that they otherwise would be compelled to handle.

District judges must be guided by their own experience and that of their colleagues in determining whether references of social security and prisoner cases to magistrate judges are productive or whether they engender duplicative judicial work.

As a final note, the Magistrate Judges Committee of the Judicial Conference strongly disfavors references of these cases to magistrate judges off-the-record for preparation of findings of fact and law. Absent the written consent of parties to have a magistrate judge enter the final order in the case, all findings of the magistrate judge should be submitted to the district judge on the record, subject to the parties' opportunity to object. See 28 U.S.C. Sec. 636(b)(1)(B), Fed.R.Civ.P. 72(b).

Case-dispositive Motions

Many of the same considerations relevant to the reference to magistrate judges of social security and prisoner cases apply to case-dispositive motions under 28 U.S.C. Sec. 636(b)(1)(B) and Fed.R.Civ.P. 72(b), including motions to dismiss, to suppress evidence, and for summary judgment. While some district judges refer all such motions to magistrate judges, most judges refer them only on a selective basis.

In referring a case-dispositive motion to a magistrate judge, a district judge should consider the likelihood of an objection to the magistrate judge's recommended findings and conclusions and the total amount of time that must be spent on the motion by both judicial officers and their law clerks. Complicated motions with voluminous records and multiple issues that need to be narrowed tend to be good candidates for a reference to a magistrate judge. Simple and less time-consuming motions are often more efficiently handled directly by the district judge and the judge's law clerks.

Under the recently liberalized procedures of 28 U.S.C. Sec. 636(c), a district judge or magistrate judge may remind the parties at any time of their opportunity to have a magistrate judge enter a final order on any part of a case, including a case-dispositive civil motion. Under this section, a motion referred to a magistrate judge with the consent of the parties would avert the potential of duplicative work.

Non-case-dispositive Motions

Reviewing discovery motions and other non-case-dispositive

motions under 28 U.S.C. Sec. 636(b)(1)(A) and Fed.R.Civ.P. 72(a) is a staple task commonly assigned to magistrate judges. In contrast to the de novo standard of review governing case- dispositive motions, the findings of a magistrate judge on a non-case-dispositive motion are subject to the clearly erroneous standard. Little duplicative judicial work is normally involved in these motions, since few are appealed to a district judge. As a result, a majority of courts refer most discovery and procedural motions to magistrate judges for disposition. On a selective basis, some judges prefer handling these motions in order to obtain a better understanding of the issues in particular cases likely to proceed to trial.

Pretrial Conferences

Magistrate judges conduct all types of pretrial conferences in civil cases, including scheduling, discovery, settlement and final pretrial conferences. Almost all magistrate judges conduct status, scheduling, and discovery conferences. The reference of settlement proceedings to magistrate judges is more common in non-jury cases where the district judge who would ultimately rule on the case might be inhibited from participating in a settlement conference.

Many judges believe that the district judge who eventually will try a case should conduct the final pretrial conference. While some district judges choose to conduct all final pretrial conferences in their own cases, others refer even these conferences to magistrate judges, at least on a selective basis, particularly in cases involving complex or multiple issues that need to be narrowed.

Alternative Dispute Resolution

Magistrate judges are used in many courts to conduct innovative proceedings designed to expedite civil cases, commonly referred to as "alternative dispute resolution." For example, they often conduct summary jury trials and "mini-trials." In some districts they assist in the administration of a court's mediation, early neutral evaluation, or adjunct settlement judge programs.

Special Masters

The Federal Magistrates Act authorizes a district judge to appoint a magistrate judge as a special master, subject to the "exceptional condition" limitation of Fed.R.Civ.P. 53. In employment discrimination cases arising under Title VII of the Civil Rights Act of 1964, magistrate judges may be used as masters whenever a district judge cannot schedule a case for trial within 120 days after issue has been joined. 42 U.S.C. Sec.

2000e(5)(f)(5). In all other civil cases, a district judge may designate a magistrate judge to serve as a special master with the consent of the parties, without regard to the "exceptional condition" limitation. 28 U.S.C. Sec. 636(b)(2).

Civil Consent Cases

A reference of a civil case to a magistrate judge under 28 U.S.C. Sec. 636(c) upon the consent of the parties removes that case from the district judge's docket and clearly saves the time of the district judge. In some districts, the pressure of criminal case filings has prevented the district judges from trying many civil cases, thereby leading to an increased use of magistrate judges to try civil cases under 28 U.S.C. Sec. 636(c). The court, however, should monitor a magistrate judge's civil trial docket to ensure that the magistrate judge has sufficient time available to assist the district judges in their cases.

Assistance

The Magistrate Judges Committee of the Judicial Conference and the Magistrate Judges Division of the Administrative Office will be pleased to respond to any concerns or requests for further information on the utilization of magistrate judges. The division, moreover is available to assist a court in evaluating its need for additional magistrate judge resources.

IV. FORMAT OF THE CHAPTER

The chapter follows the structure of 28 U.S.C. Sec. 636. There are separate headings for the duties performed pursuant to each subsection of the statute. Also included are appendices dealing with issues related to magistrate judge jurisdiction, including standards of review in bail and detention proceedings, de novo determination, and waiver under 28 U.S.C. Sec. 636(b)(1)(B). A list of "Other Duties" sets forth duties known by the Magistrate Judges Division of the Administrative Office to be performed currently by magistrate judges in some of the courts.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

INTERNAL OPERATING POLICY ON DISPOSITION OF CRIMINAL CASES

Introduction

For many years the Court in this District has efficiently and effectively managed its criminal dockets. The success of this system has been the result of sound judicial practices and the cooperation of the agencies involved and the private criminal defense bar. However, with the recent significant increase in the numbers of criminal cases and defendants indicted along with the advent of the Sentencing Guidelines and the added complexities and obligations imposed by them, this Court recognizes a need for a modification in the procedures for criminal case management and the need for an even greater spirit of cooperation in order to maintain the efficiency of the past.

It is the purpose of this policy statement to describe the criminal case disposition procedures to be followed in this District. The Court recognizes that not all cases will fit neatly into the pattern contemplated by this policy. Unusually complex cases may require significant departures from these standard procedures; therefore, this policy statement should not be seen as establishing inflexible or invariable rights or requirements. Even in those exceptional cases, however, these procedures shall form

the basic pattern to follow from which deviations may occur.

Although it may be necessary to promulgate local rules to carry into effect various elements of this procedure, this policy statement is not intended to be viewed as a binding local rule. This policy statement is offered by the Court only as a guide to procedures which will be followed in this District to manage and dispose of criminal cases.

This procedure will become effective on October 1, 1990.

I. Grand Juries

Grand juries will continue to convene on a monthly basis for such period of time as may be necessary to complete their business. The report of the grand jury will be returned to the Court during the fourth week of each month on a date established by the published schedule of this Court.

The magistrates will rotate duty with respect to accepting reports returned by grand juries. The duty magistrate responsible for each respective grand jury should receive the report of thatgrand jury.

It will be the responsibility of the United States Attorney's Office to make available promptly to the United States Probation Office the prosecutor's memoranda or appropriate reports or narrative summaries on each case for which an indictment is returned by the grand jury. In order to allow the Probation Office sufficient time in which to begin preliminary sentencing calculations, such materials should be available no later than the

close of business on the date the grand jury reports. Where, because of the unusual complexity of a case or because of the shortness of time between the arrest of the defendant and his indictment by the grand jury, it is impracticable for the United States Attorney's Office to make available these materials at the time of the grand jury's report, every effort will be made to supply those materials to the Probation Office at the earliest possible time, but not later than arraignment.

Where possible, Pretrial Services will contact defendants prior to arraignment or initial appearance to gather information relevant to the issue of pretrial release. This information will be used to complete a pretrial services report which may be reviewed by Defendant and the Government prior to arraignment or initial appearance. This report shall be made available to the U. S. Probation Office for the purpose of aiding that office in the preparation of a presentence investigation report and for use during the Probation Office Conference.

II. Arraignments

Arraignments will be scheduled ordinarily for the first Wednesday of each month unless otherwise indicated on the Court's annual calendar. Supplemental arraignments will occur on the following Wednesday and on succeeding Wednesdays thereafter as necessary. The magistrate responsible for the arraignments shall conduct them in the same manner as in the past.

Attorney's Office shall notify defense counsel that all discovery materials available to the defendant under Rule 16 of the Federal Rules of Criminal Procedure and all Brady materials known to the government have been gathered and are immediately available to the defendant. Defendant shall then choose whether he wishes to receive the discovery material. If he so chooses, receipt of the government's discovery material shall be deemed to constitute an agreement by defendant to respond to any proper reciprocal discovery request by the government just as if the defendant had filed a Rule 16, F.R.Cr.P. discovery request. In the event defendant chooses not to receive the government's discovery material at the time of arraignment, he shall have eleven (11) days thereafter in which to make a discovery request or receive the government's discovery material subject to his agreement to respond to the government's reciprocal discovery request. Discovery requests may be filed more than eleven (11) days after arraignment only with leave of court.

Defendant shall have eleven (11) days following arraignment in which to file any other motions, including, but not limited to, motions to suppress evidence, motions to dismiss the indictment, motions for a bill of particulars, motions for disclosure of electronic surveillance, and motions in limine. Motions filed more than eleven (11) days following the arraignment, except upon good cause shown, shall be denied as untimely filed.

At the arraignment, the magistrate will furnish the parties with an Order on Arraignment which will identify the attorneys

representing the defendant and the government and which will also identify the U. S. Probation Officer assigned to the case. This Order will establish a deadline for pretrial motions and discovery requests and will set the date and time for the probation office conference, the pretrial conference, the change of plea docket and the trial of the case.

The magistrate will instruct the parties that in preparation for the pretrial conference they are to meet with the assigned probation officer at a probation office conference to resolve sentencing guideline issues, and to gain assistance in preparing a sentencing guidelines worksheet to be submitted at the pretrial conference. The parties will be further instructed that the pretrial conference will be used to resolve any unsettled pretrial issues or discovery matters, sentencing guideline issues and other related problems. The parties will be expected at the pretrial conference to announce the status of the case, i.e., whether it is to be set for trial or change of plea.

III. Probation Office Conference

On a date established at arraignment, the prosecutor, defense counsel and defendant shall meet with the assigned probation officer for the purpose of discussing and resolving sentencing guideline issues and to gain assistance in the preparation of the sentencing guidelines worksheet.

Both the prosecutor and defense counsel are expected to be sufficiently familiar with the case to be able to identify legal

and factual issues and disputes that may impact upon sentencing under the guidelines. Parties also will have the opportunity at the conference to calculate and assess possible alternatives under the Sentencing Guidelines predicated upon assumptions about dismissals of counts in the indictment, suppression of evidence, and the resolution of factual disputes relevant to sentencing. The parties are urged to use the probation office conferences to resolve disputes and reach a mutually agreeable understanding about possible sentences under the guidelines.

The Court recognizes that many cases will not be resolved on the basis of a guilty plea, and nothing in this policy statement should be taken as disparagement of trials for those defendants who wish to go to trial. Even in those cases expected to go to trial, however, the probation office conference will provide an opportunity for the defendant to receive a preliminary sentencing calculation and information about increases or decreases that may occur as a result of the application of the Sentencing Guidelines. Thus, even in cases expected to go to trial and cases in which the defendant is uncertain about whether to plead or go to trial, the probation office conference will be held, and counsel are required to attend.

The discussions that take place at the probation office conference are deemed by the Court to be in the nature of plea negotiations and, thus, are inadmissible in evidence at trial for any purpose. Furthermore, nothing in this policy should be construed as indicating that the U. S. Probation Office will take

part in plea negotiations. Moreover, the parties should understand that agreements reached at the probation office conference regarding sentencing factors and calculations are not binding on the Court and may, in fact, be rejected by the Court.

IV. Pretrial Conferences

Pretrial conferences will be conducted by the duty magistrate on a date approximately three weeks prior to the start of the criminal trial term as established at arraignment. Present at the conference shall be defense counsel and counsel for the government. The Defendant may attend but his presence is not required. The purpose of the pretrial conference shall include, but not be limited to, disposition of pretrial motions, resolution of discovery disputes and scheduling problems, and identification of sentencing guideline issues and other problems affecting the disposition of the case. In that regard, at the conference, the parties shall be expected to be prepared to discuss and resolve (where possible) these pretrial matters.

The parties will also be expected to make a firm commitment as to the final disposition of the case. Where the defendant indicates that there will be a change of plea, he will be expected to file a Notice of Intent to Plead Guilty form with the magistrate at the time of the pretrial conference. The case will then be set on a plea docket before the presiding District Judge during the week following the pretrial conference. Where the plea is the result of plea negotiations, both parties will be expected to execute a Rule

11 Plea Agreement to be filed with the Court on or before the date of the plea.

Where the defendant indicates that the case will require atrial, the parties will be expected to be prepared to discuss all trial issues and problems including scheduling conflicts, witness and evidence problems and other matters affecting the trial of the case. The parties shall also be expected to enter any appropriate stipulations or agreements and shall firmly establish the number of days required to try the case.

V. Change of Plea Docket

The change of plea docket is for the taking of pleas of guilty and will be scheduled during the week following the pretrial conference on a date and time established at the pretrial conference with the consent of the Court. This plea docket will be conducted in much the same manner as in the past; however, where the plea is the result of plea negotiations, the parties will be required to execute and file a written Rule 11 Plea Agreement on or before the date of the plea. The proceeding will be conducted in accord with Rule 11, F.R.Crim.P. After entry of the plea, the Probation Office will be instructed to complete a presentence investigation report and the matter will be set for sentencing approximately sixty days later.

VI. Trial Docket

All cases not disposed of on the change of plea docket will be set on the trial docket on a date in accord with the published trial schedule in this District and as further established at the pretrial conference.

For those cases that result in a conviction following trial, sentencing will be set by the Court at a later time, taking into consideration the needs of the Probation Office to investigate, prepare, and disclose to the defendant the presentence report, as well as the need of the parties to prepare to controvert any portion of the presentence report with which they disagree. Although the Court may conduct a regularly scheduled sentencing docket at which many cases may be set, the Court retains the discretion to set sentencing in any particular case either sooner or later than the sentencing docket.

VII. Sentencing Hearing

The purpose of the sentencing hearing is to provide not only for the formal imposition of sentence, but also to afford the parties an opportunity to offer evidence relevant to any legal or factual disputes arising out of the presentence report and sentencing calculation. It is anticipated that the Probation Office will have completed and disclosed to the parties the presentence report and sentencing calculation at least twenty (20) days prior to the sentencing hearing. No later than ten (10) days prior to the hearing, any party may file written objections to the presentence

report or sentencing calculation. Except upon good cause shown, the Court will not hear or consider any objections to or disputes with the presentence report or sentencing calculation filed less than ten (10) days before the sentencing hearing.

At the hearing, the Court will receive such evidence as may be appropriate, make findings of fact, and impose sentence.

This policy is hereby adopted on this the 16th day of August, 1990, and becomes effective on October 1, 1990.

Alex T. Howard
CHIEF DISTRICT JUDGE

Charles R. Butler, Jr.
DISTRICT JUDGE

Richard W. Vollmer, Jr.
DISTRICT JUDGE

W. B. Hand
SENIOR DISTRICT JUDGE

PROBATION OFFICE SUMMARY

The Probation Office for the Southern District of Alabama is responsible for the supervision and investigation of offenders and defendants as ordered by judicial officers. In order to accomplish this mission, the Probation Office has twenty-five employees, consisting of fifteen officers, nine probation clerks and one automation specialist. This office has jurisdiction over the thirteen counties in southwest Alabama, which comprises the Southern District of Alabama. In those counties, we supervise approximately 525 offenders and conduct presentence investigations which result in approximately 360 presentence reports annually. Additionally, we perform a collateral investigative function for other district courts, the Bureau of Prisons, the United States military authorities and the United States Parole Commission, which culminates in approximately 780 investigations annually.

The presentence report is one of the more significant products of the Probation Office due to the emphasis placed on it by the courts and correctional authorities. Probation officers complete presentence reports pursuant to the requirements of the Sentencing Reform Act of 1984 and directives from the United States Sentencing Commission. The preparation of the presentence report under the Sentencing Reform Act of 1984 demands that a probation officer exercise greater legal and quasi-legal expertise than was previously required. The officer makes judgments of the offense conduct based on the preponderance of evidence standard for the presentence report, acts as a mediator in resolving disputes concerning the presentence report, and makes preliminary findings of fact for the Court.

The presentence report identifies and classifies the offense under the categories established by statute and the Sentencing Commission and sets forth applicable sentencing range for each offense. The presentence report also provides the offender's social history, which includes his or her prior arrest record, family history, employment history, educational background, military history, and marital history. The report contains the probation officer's assessment of the offender's medical and psychological history and the need for treatment. On occasion, the presentence report will reflect a recommendation that a psychiatric evaluation is warranted due to the potentiality of an abnormal mental condition which will need to be addressed in sentencing or supervision. Further, the presentence report furnishes for each offense a suggested sentence and the sentencing range, and supplies an explanation by the probation officer of the factors which were included in reaching the officer's conclusions. Contained in the presentence report is the officer's assessment of a particular offender's suitability to voluntarily surrender himself to a certain prison facility at a specified time rather than having to be transported by the U.S. Marshal. The offender's ability to pay

a fine, the identity of victims, the amount of restitution, and the method of collecting the fine is also reflected in the presentence report.

In completing the second part of the mission, the probation officer supervises offenders. A probation officer is guided by statutory law which mandates probation officers to enforce the conditions of supervision imposed on offenders, to control the risk posed by offenders, and to provide correctional treatment to offenders as needed. The probation officer makes every effort to identify and solve problems presented by offenders that left unattended could cause criminal behavior or a violation of release conditions. The probation officer interacts with all law enforcement agencies, federal, state, and local, in order to share information and detect any criminal behavior by offenders under supervision.

During supervision activities, the probation officer will counsel an offender and will refer the offender to community agencies that can provide treatment or assistance which will hopefully reduce any risk the offender could present to society. In the Southern District of Alabama, the Probation office contracts with the appropriate state agency in each of the thirteen counties in order to provide drug, alcohol, and mental health treatment for offenders. Urinalysis testing is conducted on all persons under supervision, with only a few exceptions, on different schedules, up to and including six per month, four of which are on a surprise basis. Currently, there are approximately 106 offenders of our supervision population of 525 under intensive urine collection and drug counseling.

Since the Sentencing Reform Act of 1984 was enacted, community confinement under the supervision of a probation officer has been established. Curfew parole, house detention, electronic monitoring, and intensive supervision have been assigned as additional duties of the probation officer. The forms of community confinement provide sentencing alternatives and supervision choices to judicial officers and parole authorities. Also included in the supervision responsibilities is a witness security detail, which requires a probation officer to provide supervision to protected witnesses who have cooperated or continue to cooperate with authorities. The Witness Security Program demands anonymity.

Probation officers maintain proficiency in their knowledge of the sentencing guidelines through ongoing training programs administered both at the national and local level. Officers are expected to contribute to ongoing training programs and to stay informed of new developments and techniques in the correctional field. Additionally, probation officers are trained and qualified in the use of firearms on a semi-annual basis.

Probation officers are housed in a single location in Mobile

with office space in Selma, Alabama available to officers who travel to that area, which is usually on a bi-weekly basis. During the past fiscal year, probation officers in this district drove in excess of 50,000 miles within the Southern District of Alabama in performance of their statutory duties.

December 11, 1991

PRETRIAL SERVICES

The functions and powers relative to Pretrial Services are elaborated under 18 USC 3154. The primary function is to collect, verify and report to the judicial officer prior to any Pretrial release hearing information that relates to each defendant charged with an offense, particularly with relationship to the danger that the release of that defendant may pose to the community. In addition to the recommendation as to release or detention, the Pretrial Services Officer will also recommend appropriate conditions of release. Furthermore, the Pretrial Services Officers will supervise persons released, if so ordered by the Court. Pretrial Services will also operate a contract for the operation of appropriate facilities for the custody or care of persons released to Pretrial supervision. This will include residential half-way houses, various treatment centers for alcohol and drug abuse as well as counseling services.

The office will also inform the Court and the United States Attorney of all apparent violations of Pretrial release conditions and recommend appropriate modifications of release conditions or detention if so warranted. Pretrial Services officers will also assist persons released in securing employment, medical, legal or social services. Pretrial Services will also prepare, in cooperation with the United States Marshal and United States Attorney's office, such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of defendants pending trial. The office will also develop and implement a system to monitor and evaluate bail activities and provide information to the judicial officer on the results of bail decisions and prepare periodic reports to assist in the improvement of the bail process.

The Pretrial Services office will also collaborate with the United States Attorney's office to collect, verify and prepare reports for the United States Attorney's office on information pertaining to the Pretrial Diversion program for individuals referred to that program by the U.S. Attorney's office. Pretrial Services will also make contact to such an extent and in such amounts as are provided and are appropriated for the carrying out of any Pretrial Services function.

A separate Pretrial Services office was established in the Southern District of Alabama in August, 1989. A Chief Pretrial Services Officer was selected by Chief Judge Alex T. Howard in January, 1990. Currently, the staff of the U.S. Pretrial Services office consists of one chief, a chief clerk/secretary to the chief, five pretrial services officers, one student contractor, and one secretary.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

SUMMARY OF THE CHART GALLERY

The following chart gallery is a five-year statistical profile for the United States District Court for the Southern District of Alabama. Data has been compiled categorically and comparatively for the twelve-month periods ending June 30, 1987 through June 30, 1991.

The gallery includes the following:

FLOW CHARTS

- Civil flow chart reflecting the movement of civil cases through the court system.
- Criminal flow chart reflecting the movement of criminal cases through the court system.

OVERALL WORKLOAD STATISTICAL PROFILE

- Overall workload statistics.
- Total trial hours for each judicial office in both civil and criminal cases.
- Total trial hours for jury and non-jury trials in both civil and criminal cases.
- Total court hours for each judicial officer for civil trials, criminal trials, and other proceedings.

CIVIL CASES

- Total case filings for 1987 - 1991.
- Civil case filings by nature of suit.
- Comparative chart of filings in similar size districts.
- Comparative chart by case type.

CRIMINAL CASES

- Total criminal case filings 1987 - 1991.

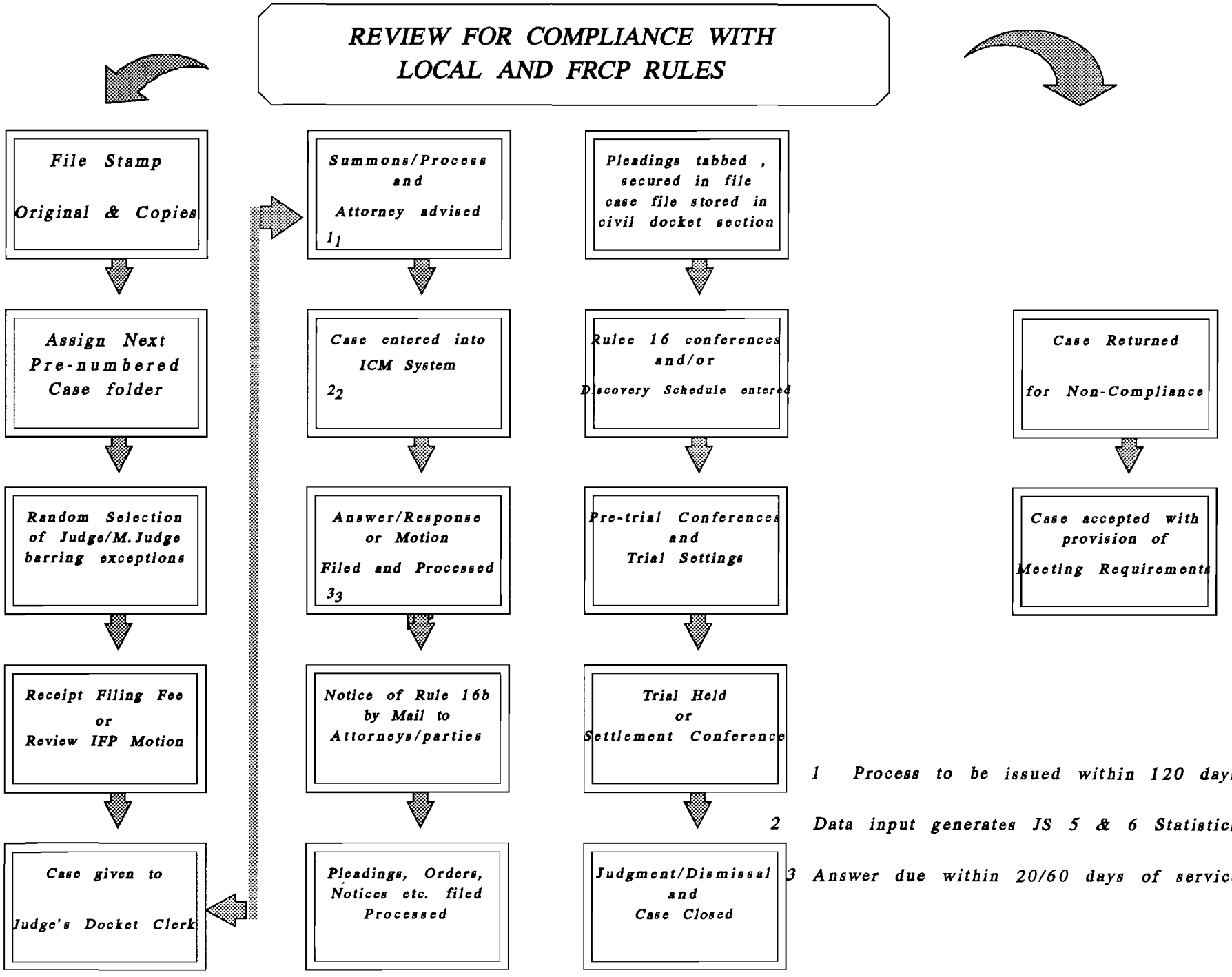
- Criminal case filings by nature of offense and district comparative

- Criminal case filings by district.

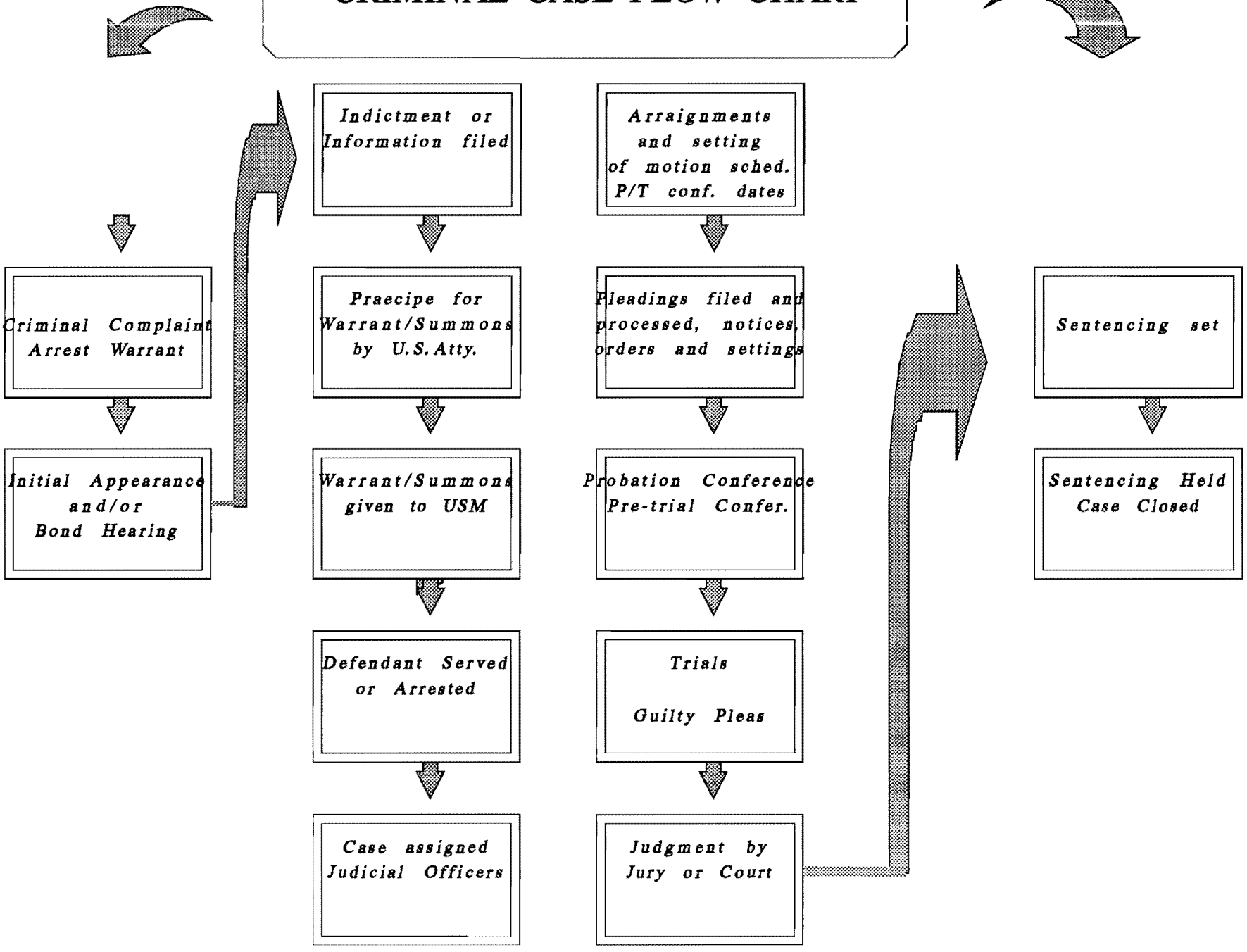
LEGEND

SDAL - Southern District of Alabama; MDAL - Middle District of Alabama; NDFL - Northern District of Alabama; MDGA - Middle District of Georgia; SDGA - Southern District of Georgia

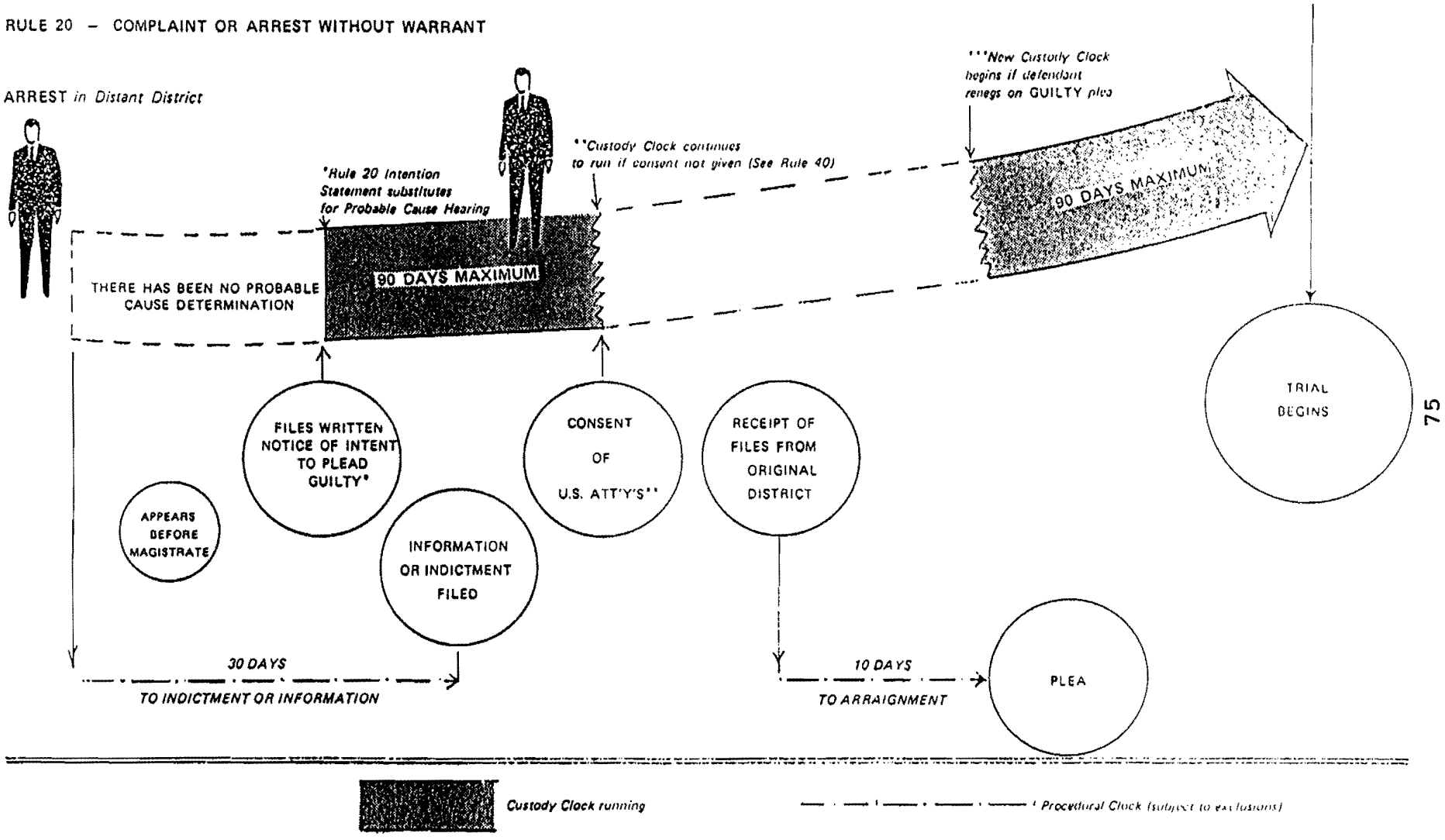
The data used in the preparation of the chart gallery was extracted from the Annual Report of the Administrative Office of the United States Court.


REVIEW FOR COMPLIANCE WITH LOCAL AND FRCP RULES
File Stamp
Original & Copies
Assign Next Pre-numbered Case folder
Random Selection of Judge/M. Judge barring exceptions
Receipt Filing Fee or Review IFP Motion
Case given to Judge's Docket Clerk
Summons/Process and Attorney advised 1
Case entered into ICM System 2
Answer/Response or Motion Filed and Processed 3
Notice of Rule 16b by Mail to Attorneys/parties
Pleadings, Orders, Notices etc. filed Processed
Pleadings tabbed , secured in file case file stored in civil docket section
Rulee 16 conferences and/or Discovery Schedule entered
Pre-trial Conferences and Trial Settings
Trial Held or Settlement Conference
Judgment/Dismissal and Case Closed
Case Returned for Non-Compliance
Case accepted with provision of Meeting Requirements
1 Process to be issued within 120 days
2 Data input generates JS 5 & 6 Statistics
3 Answer due within 20/60 days of service

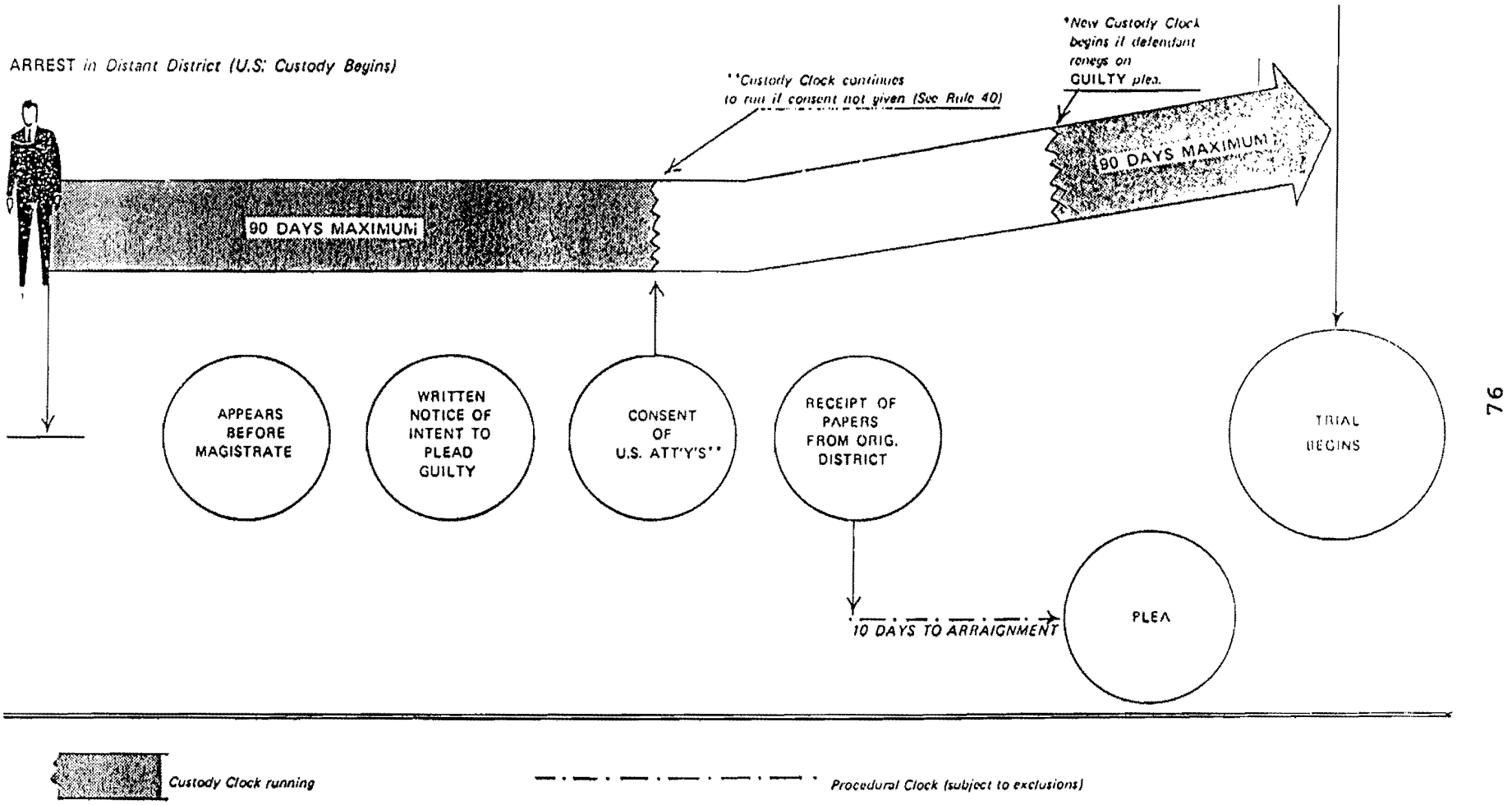
CRIMINAL CASE FLOW CHART



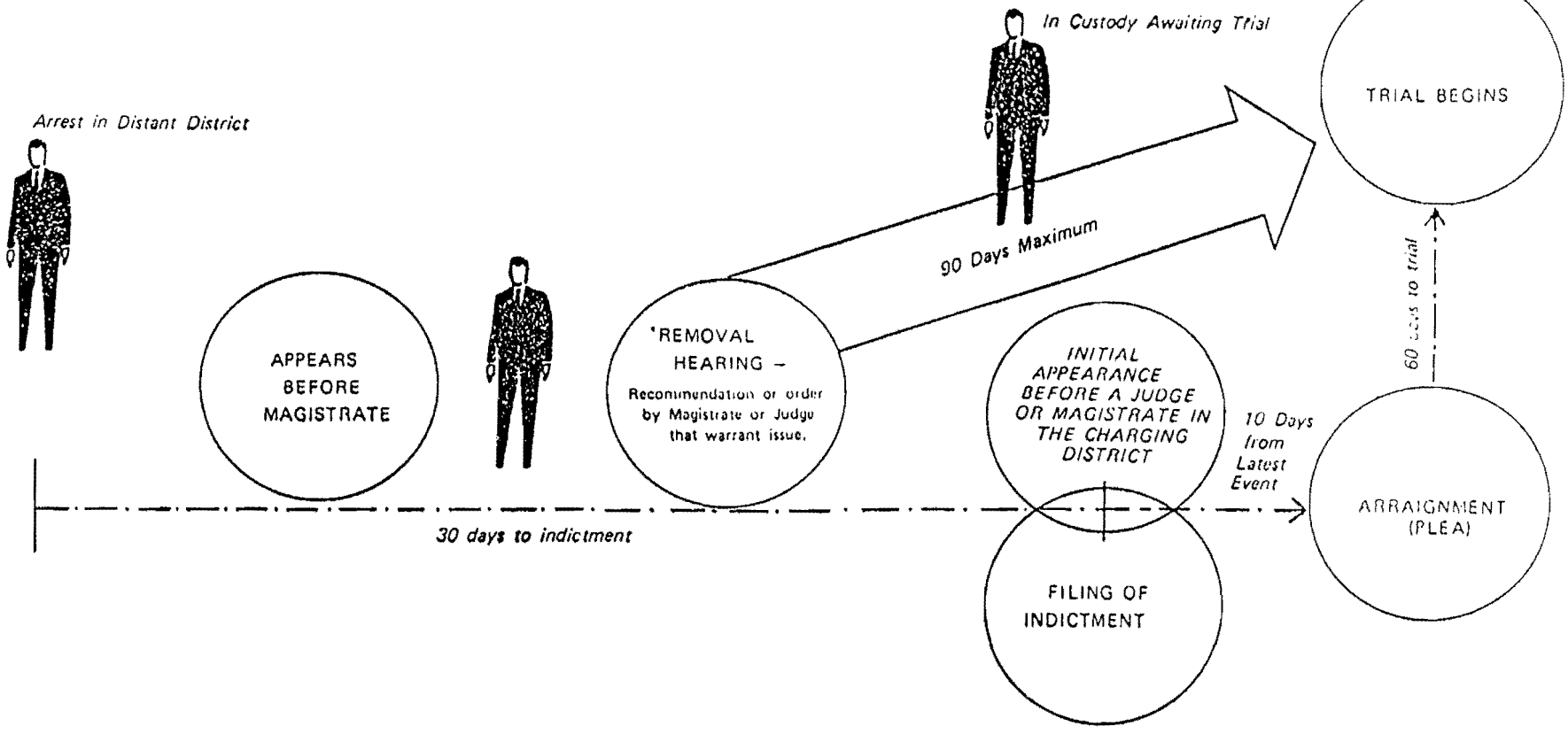
RULE 20 – COMPLAINT OR ARREST WITHOUT WARRANT



RULE 20 – INDICTMENT OR INFORMATION

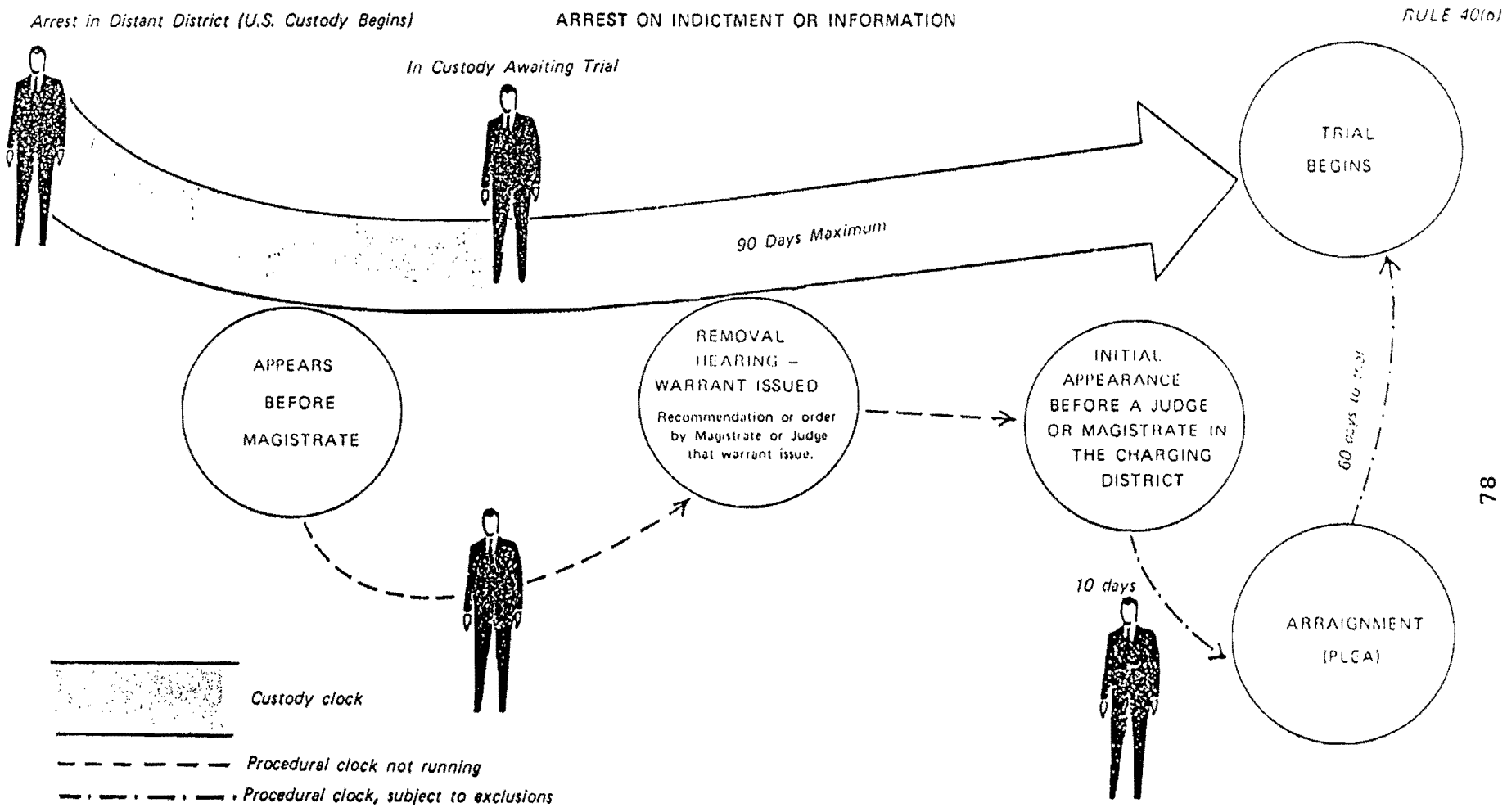


ARREST ON COMPLAINT OR WITHOUT WARRANT



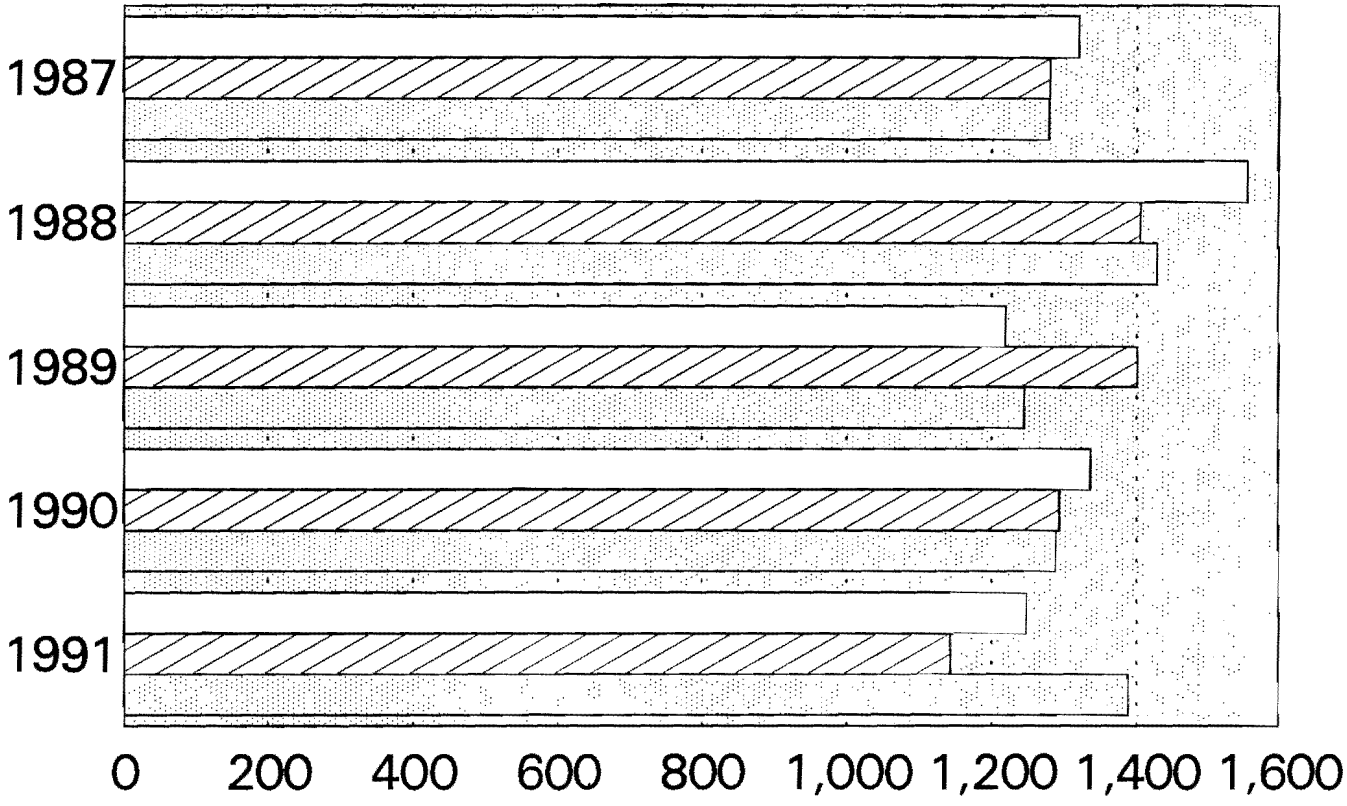
Custody clock running — Procedural clock (subject to exclusions)

*Custody clock would begin to run at filing of indictment – which could precede the removal hearing.


Arrest in Distant District (U.S. Custody Begins)
ARREST ON INDICTMENT OR INFORMATION
RULE 40(b)
In Custody Awaiting Trial
90 Days Maximum
TRIAL BEGINS
APPEARS BEFORE MAGISTRATE
REMOVAL HEARING – WARRANT ISSUED
Recommendation or order by Magistrate or Judge that warrant issue.
INITIAL APPEARANCE BEFORE A JUDGE OR MAGISTRATE IN THE CHARGING DISTRICT
10 days
ARRAIGNMENT (PLEA)
Custody clock
Procedural clock not running
Procedural clock, subject to exclusions

SOUTHERN DISTRICT OF ALABAMA

OVERALL WORKLOAD STATISTICS

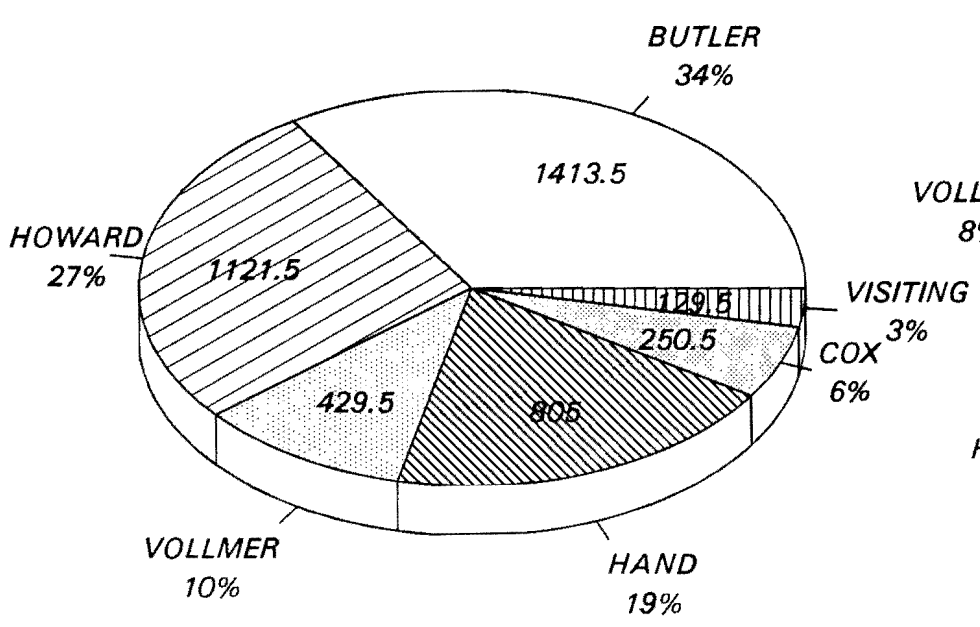


FILED	*1,320*	*1,556*	*1,219*	*1,336*	*1,248*
CLOSED	*1,280*	*1,405*	*1,401*	*1,293*	*1,144*
PENDING	*1,279*	*1,429*	*1,245*	*1,288*	*1,388*

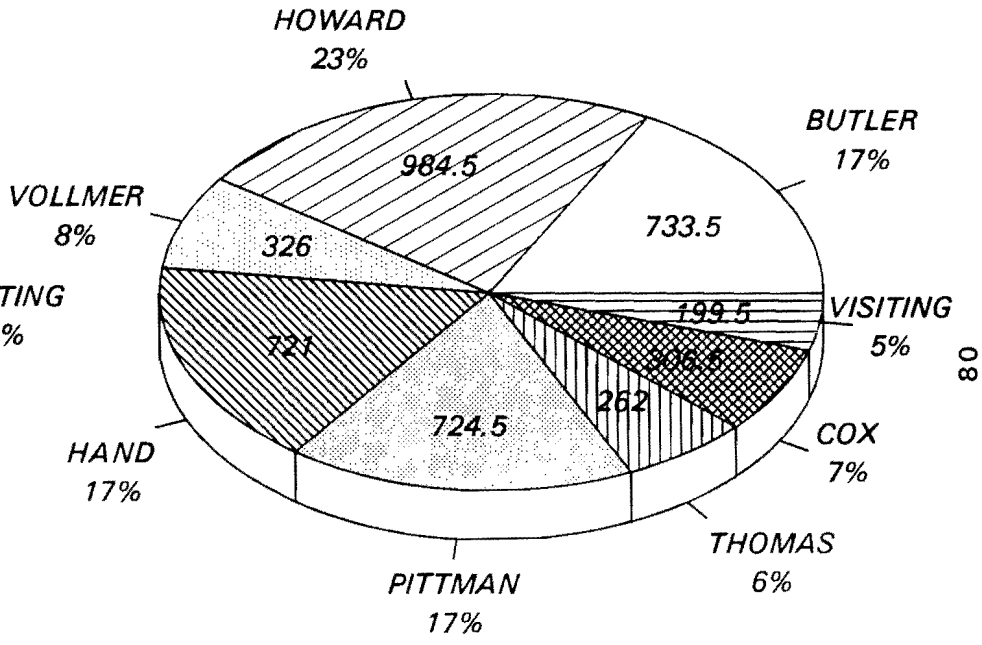
1 Statistics reflect twelve month periods ending June 30th
2 Filings in the "Overall Workload Statistics" include felony transfers
3 Statistics as reported in USDC Judicial Workload Profile

SOUTHERN DISTRICT OF ALABAMA

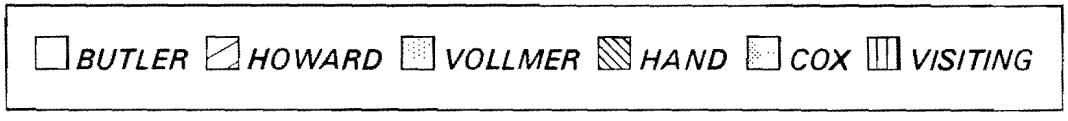
JUDICIAL OFFICERS TOTAL TRIAL HOURS 1987 - 1991



CRIMINAL TRIALS



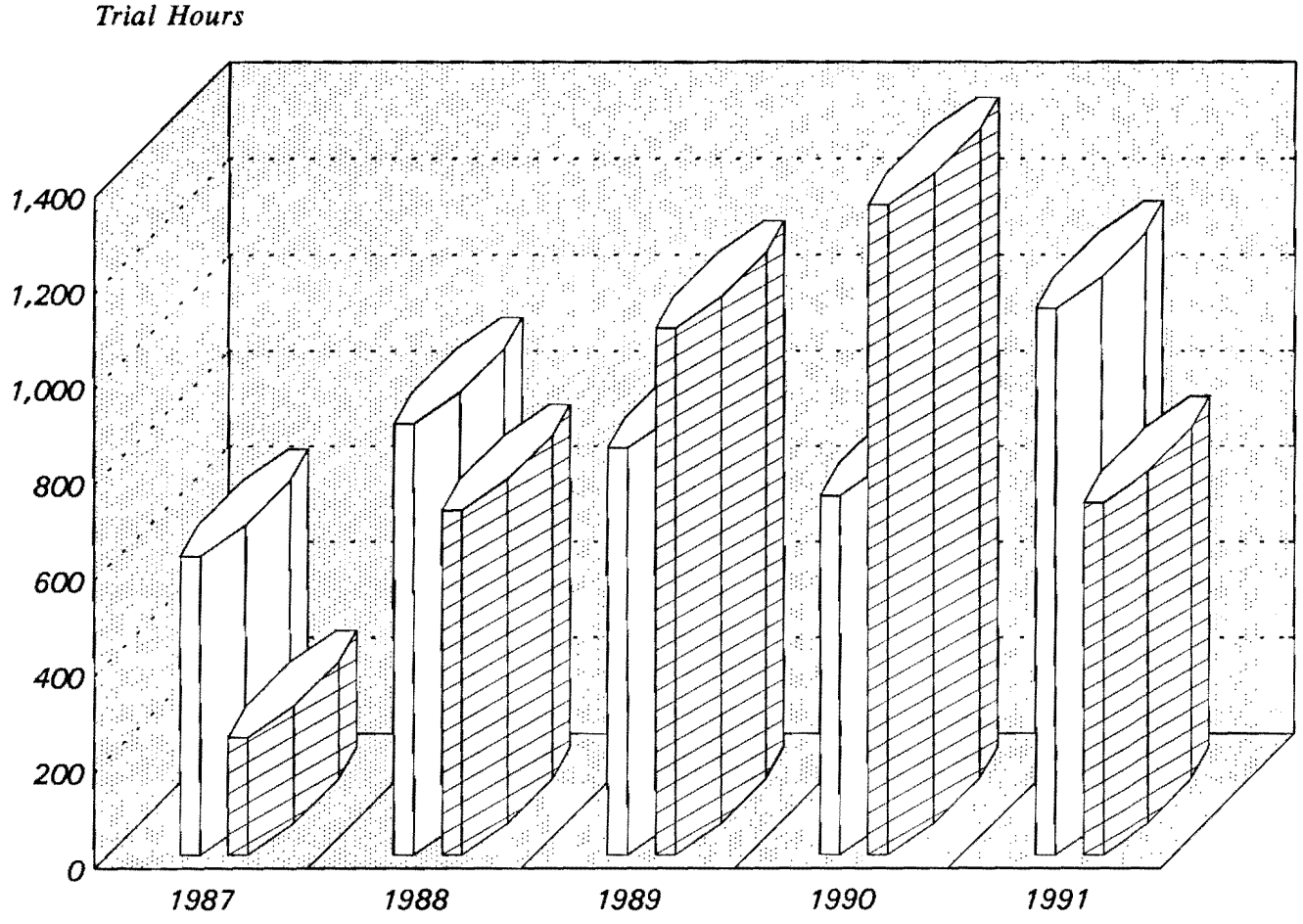
CIVIL TRIALS



1 1988 - Judge Butler appointed; Judge Cox to Circuit Judge
2 1989 - Judge Hand to Senior Status
3 1990 - Judge Vollmer appointed

SOUTHERN DISTRICT OF ALABAMA

JURY AND NON-JURY TRIAL HOURS 1987 - 1991

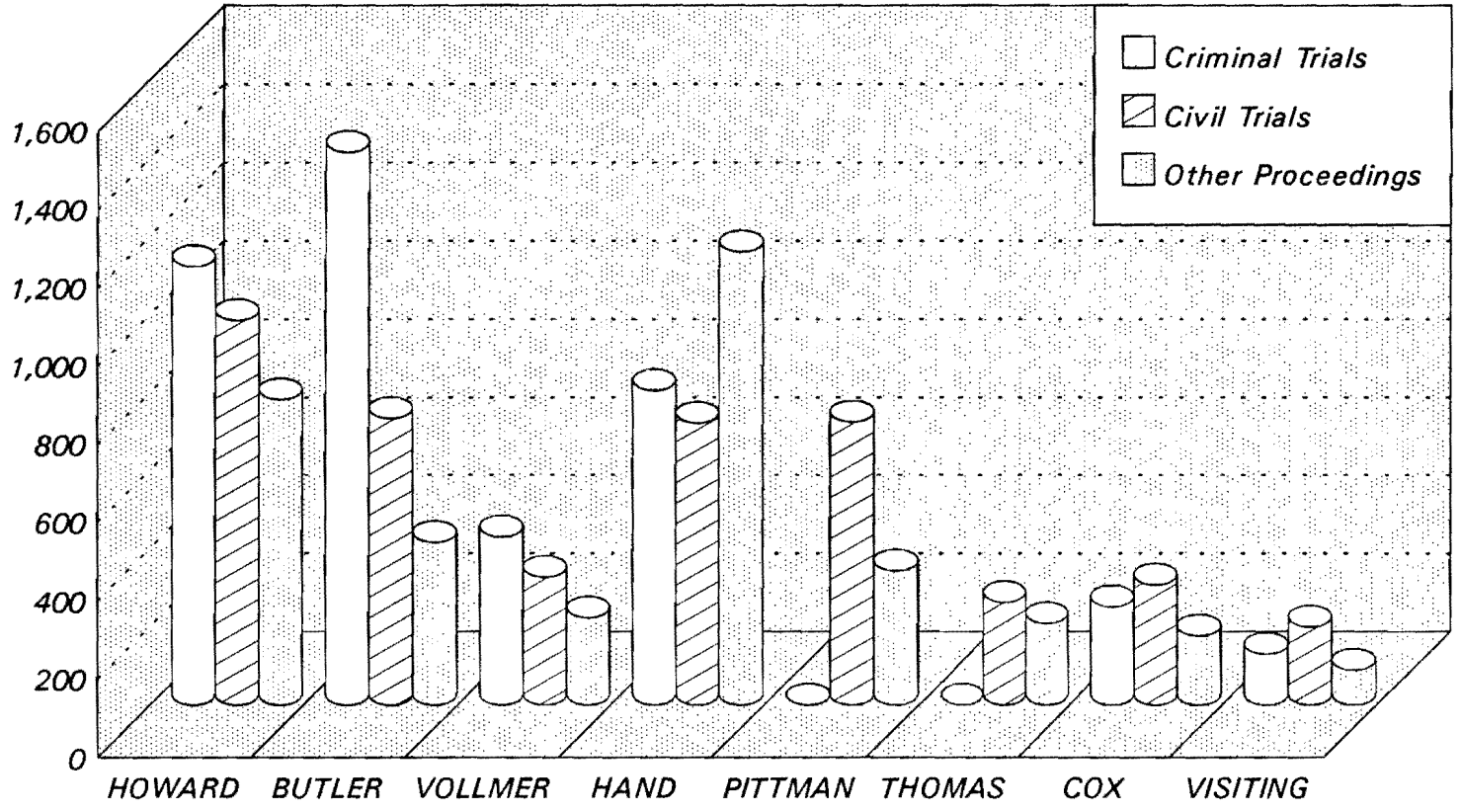


	1987	1988	1989	1990	1991
CIVIL	621.5	899.5	848	748	1,140.5
CRIMINAL	243.5	717.5	1,099.5	1,355.5	733.5

1 Data for twelve month periods ending June 30th of each year.

SOUTHERN DISTRICT OF ALABAMA

JUDICIAL OFFICERS TOTAL COURT HOURS 1987 - 1991

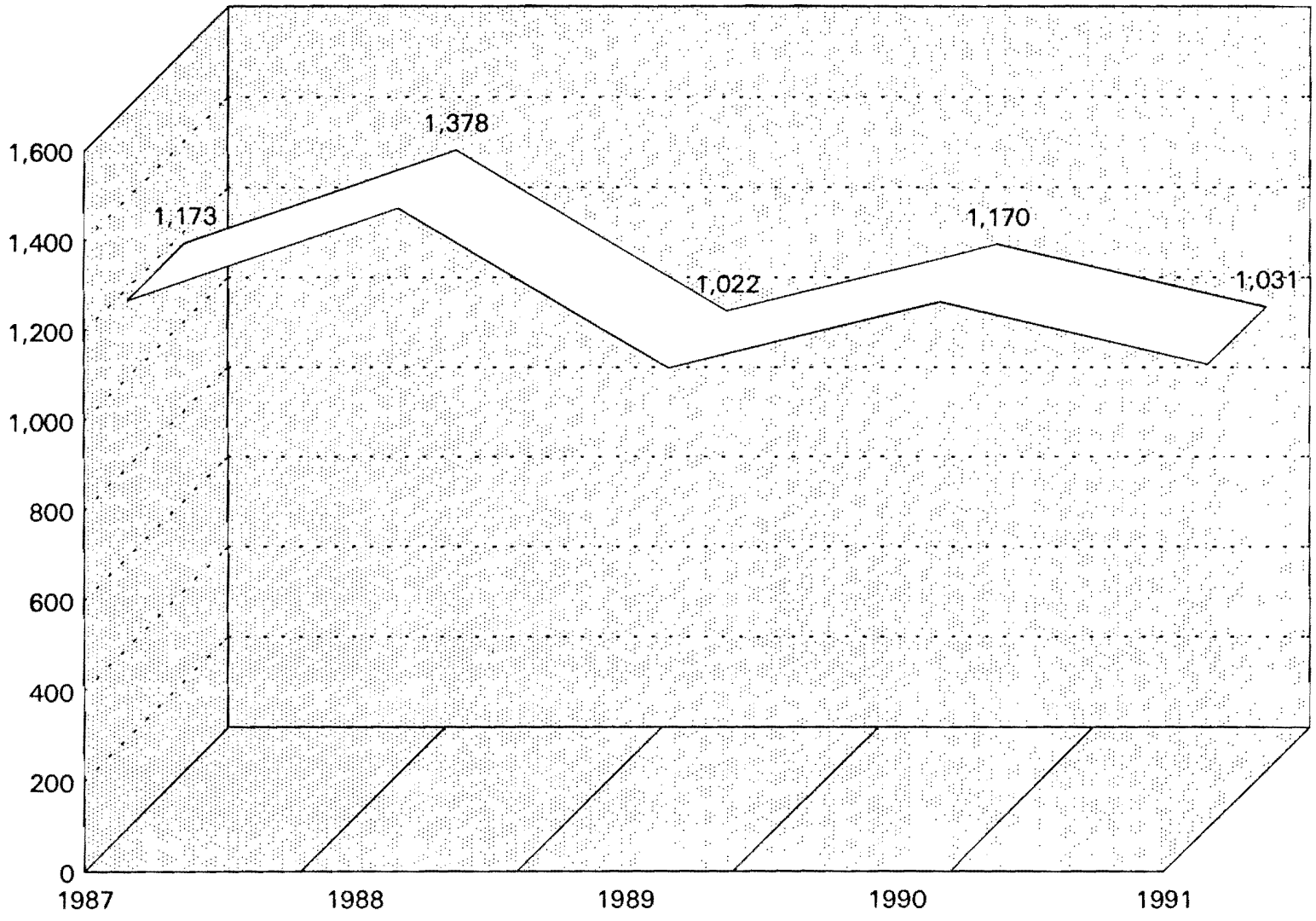


Criminal Trials	1,121.5	1,413.5	429.5	805	0	0	250.5	129.5
Civil Trials	984.5	733.5	326	721	724.5	262	306.5	199.5
Other Proceedings	782	415.5	222.5	1,159	342.5	208	176.5	89

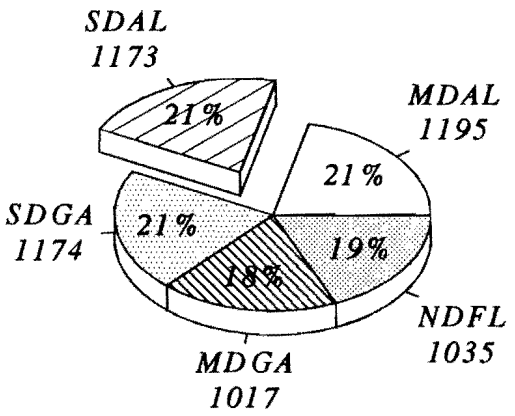
1 1988 - Judge Butler appointed
2 1989 - Judge Hand to Senior Status
3 1990 - Judge Vollmer appointed

SOUTHERN DISTRICT OF ALABAMA

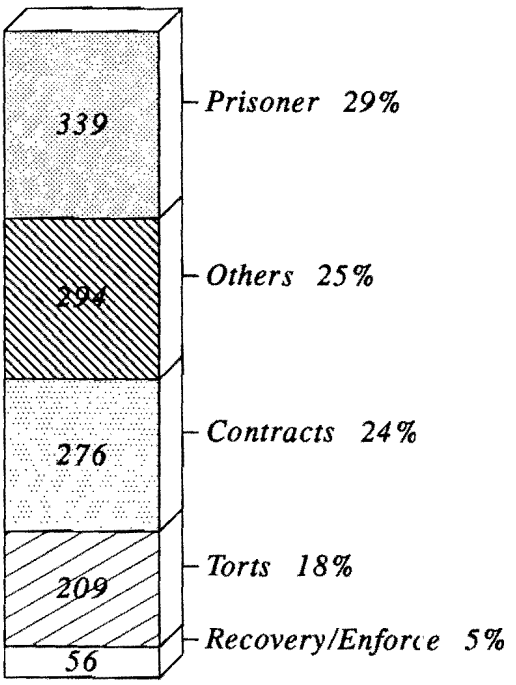
CIVIL CASE FILINGS 1987 - 1991



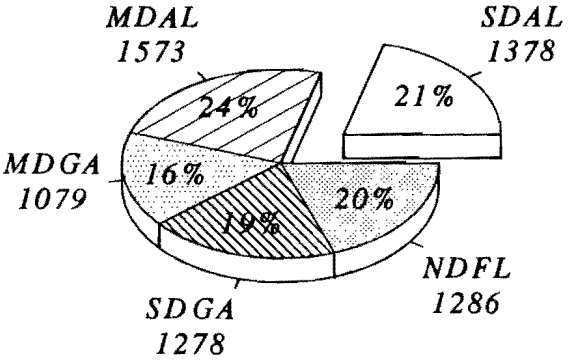
CIVIL FILINGS BY CASE TYPE



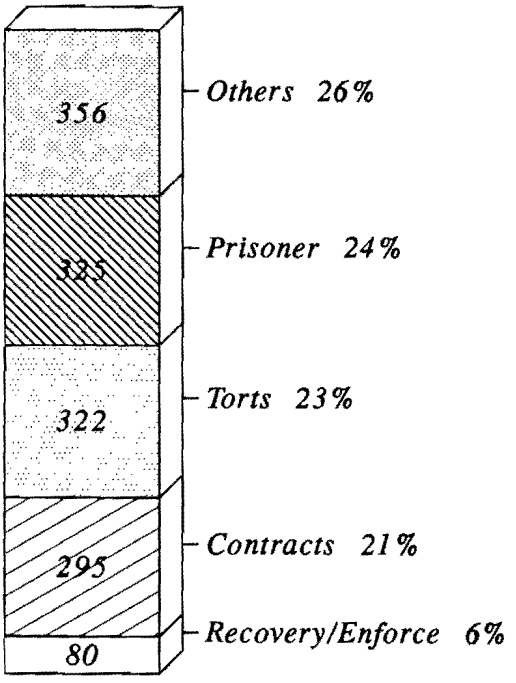
Districts 1987



SDAL 1987

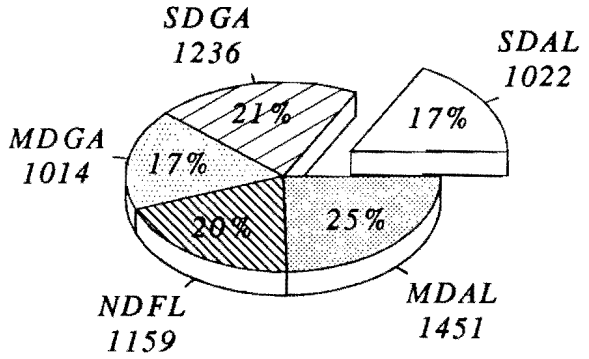


Districts 1988

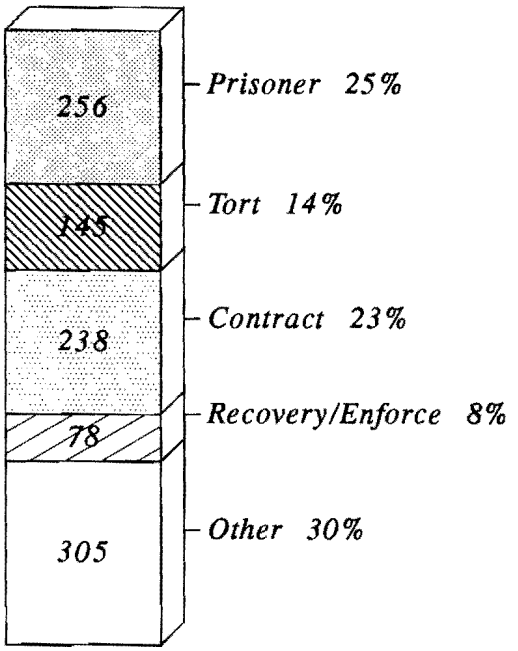


SDAL 1988

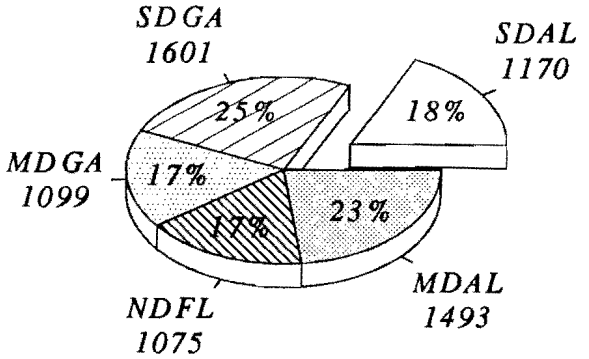
CIVIL FILINGS BY CASE TYPE



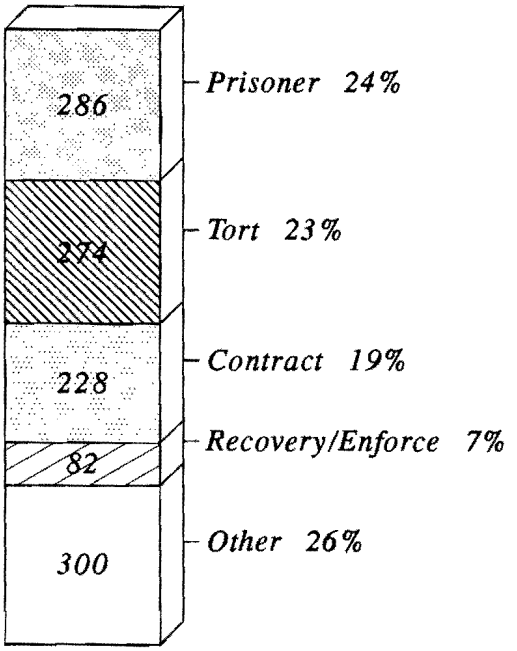
Districts 1989



SDAL 1989



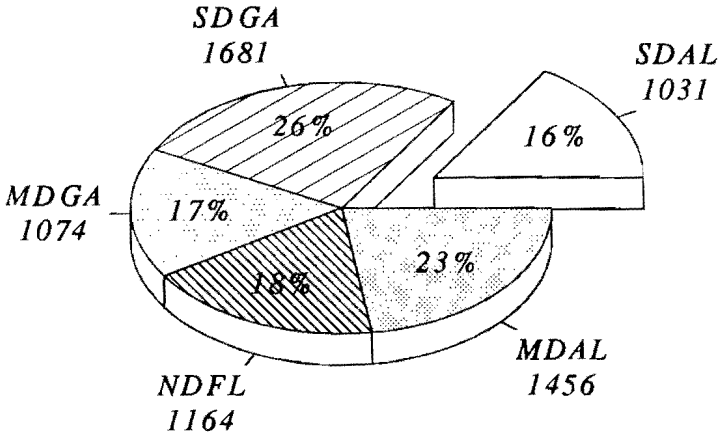
Districts 1990



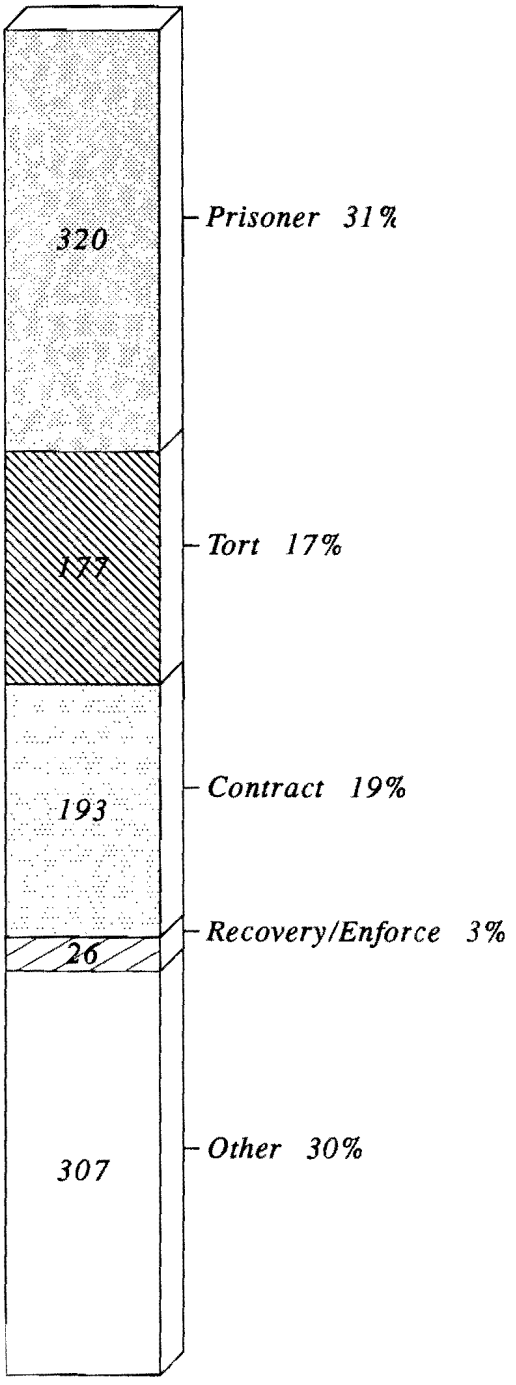
SDAL 1990

1 Pie Slice shows SDAL percentage of overall filings
2 Column charts reflect SDAL case type proportion

CIVIL FILINGS BY CASE TYPE



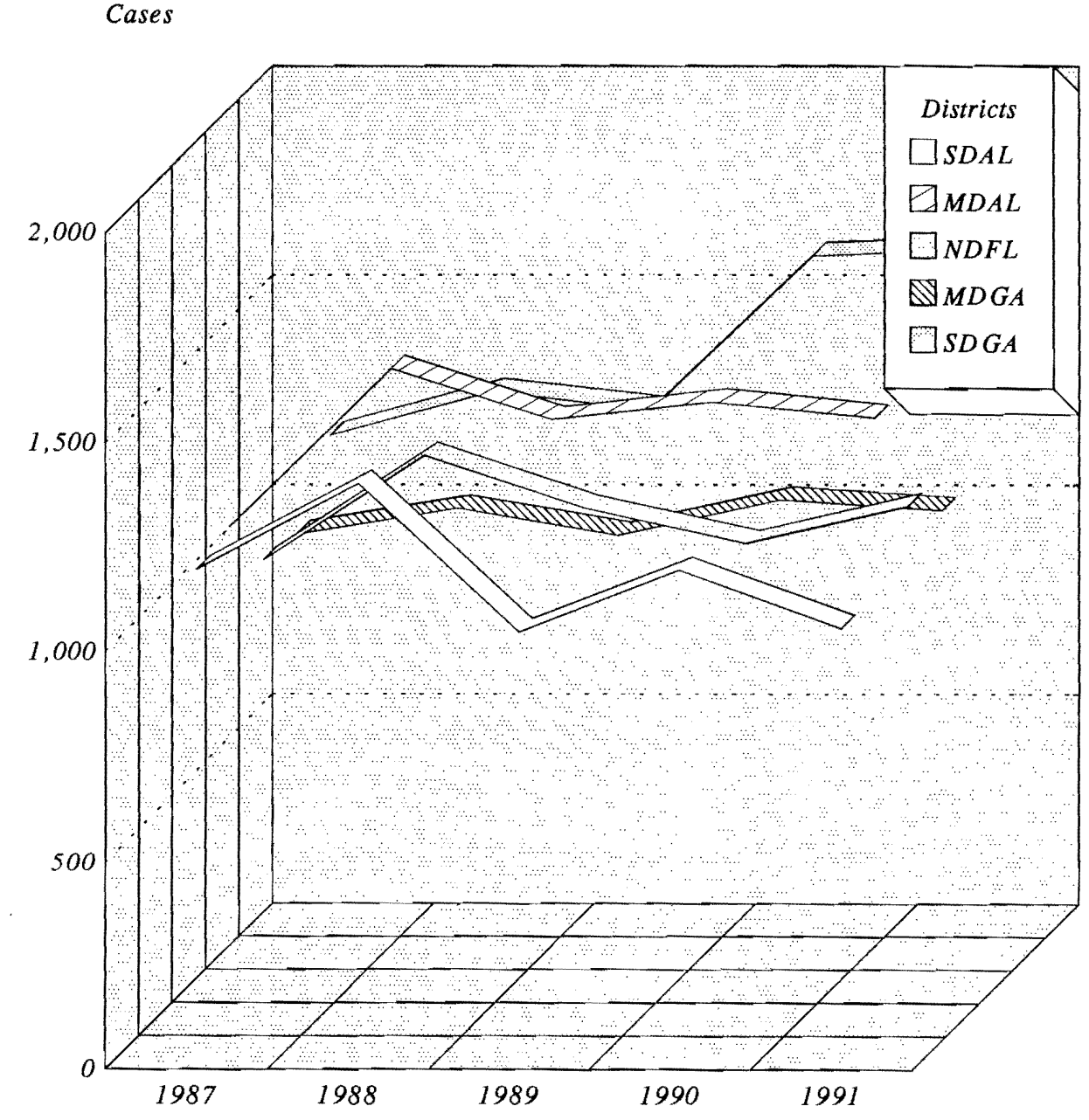
Districts 1991



SDAL 1991

1987 - 1991 CIVIL FILINGS

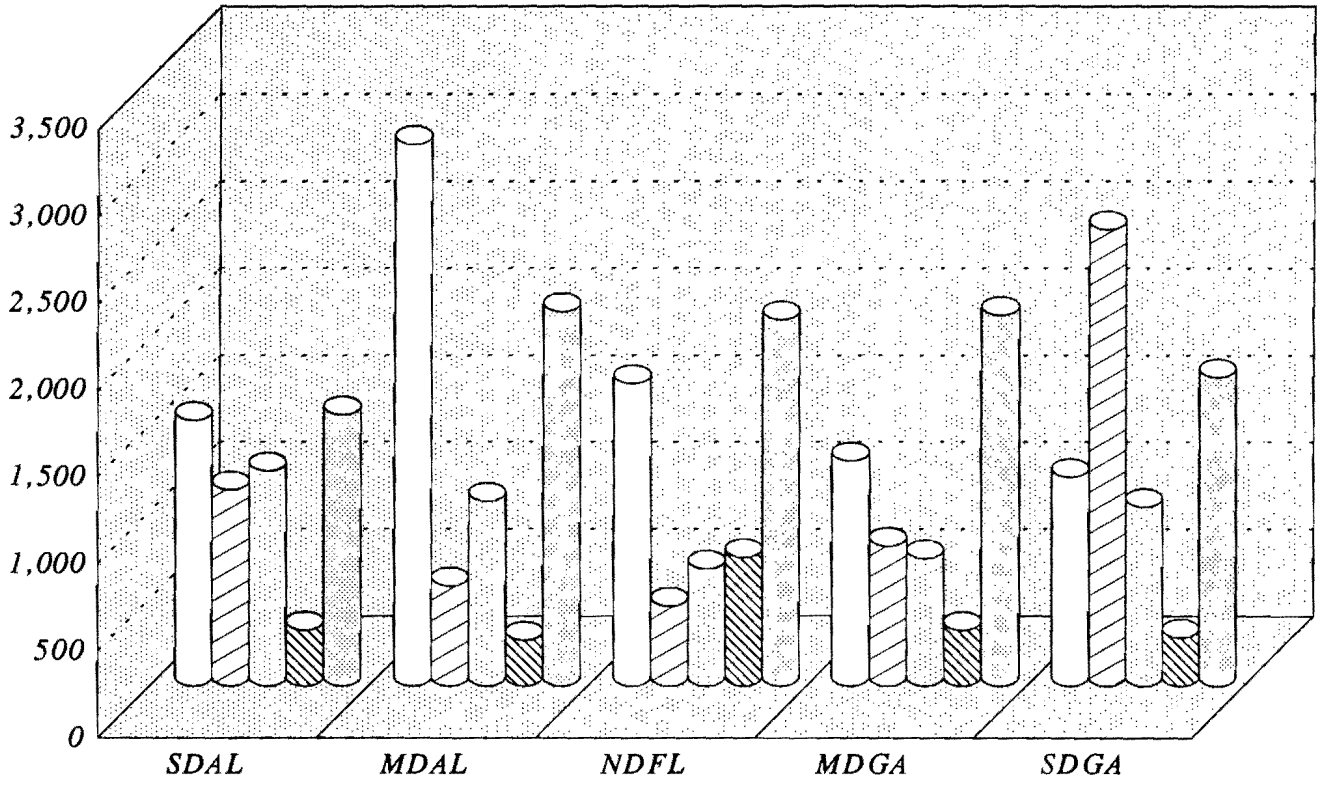
TWELVE-MONTH PERIODS ENDING JUNE 30TH



SDAL	1,173	1,378	1,022	1,170	1,031
MDAL	1,195	1,573	1,451	1,493	1,456
NDFL	1,035	1,286	1,159	1,075	1,164
MDGA	1,017	1,079	1,014	1,099	1,074
SDGA	1,174	1,278	1,236	1,601	1,618

DISTRICT CASE FILINGS BY TYPE

COMPARATIVE TOTALS FOR 1987 - 1991

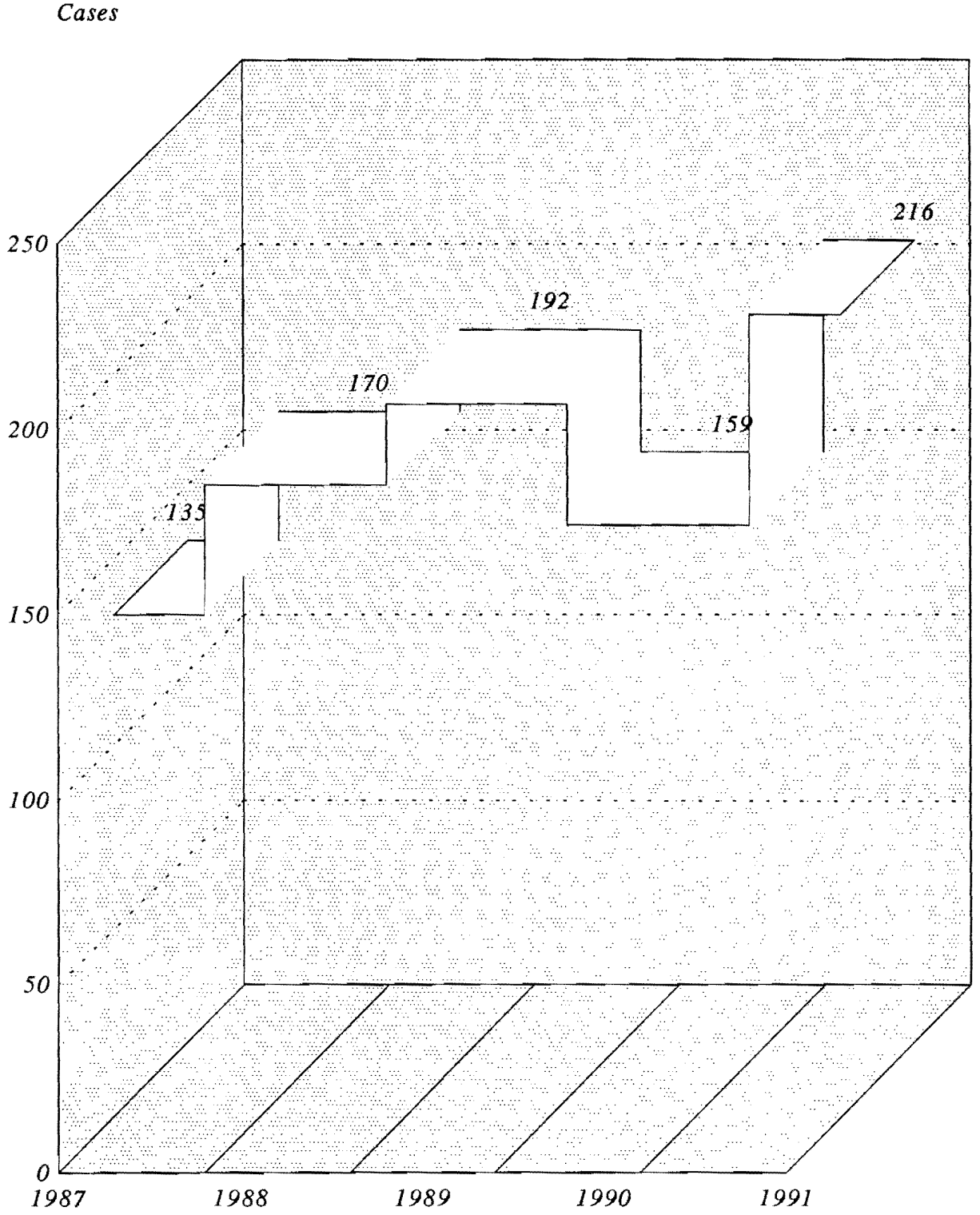


	SDAL	MDAL	NDFL	MDGA	SDGA
Prisoner	*1,529*	*3,114*	*1,741*	*1,293*	*1,200*
Tort	*1,126*	*575*	*459*	*804*	*2,623*
Contract	*1,235*	*1,061*	*672*	*732*	*1,028*
Recovery	*322*	*264*	*739*	*321*	*279*
Other	*1,562*	*2,154*	*2,108*	*2,133*	*1,777*

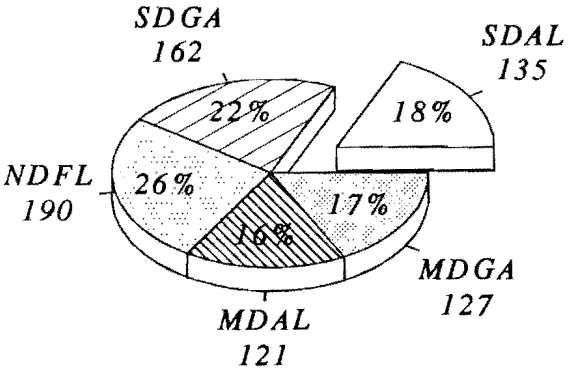
1 Recovery Series - SBA, VA, Judgement Enforcements, etc.
2 Other Series: Civil Rights, Soc. Security, etc.

1987 - 1991 CRIMINAL FILINGS

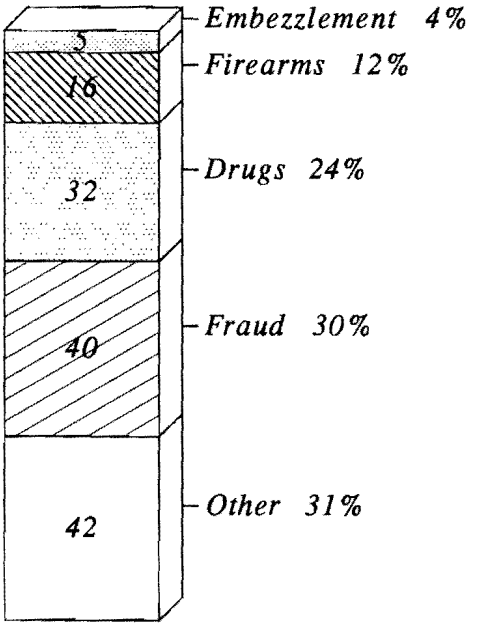
TWELVE-MONTH PERIODS ENDING JUNE 30TH



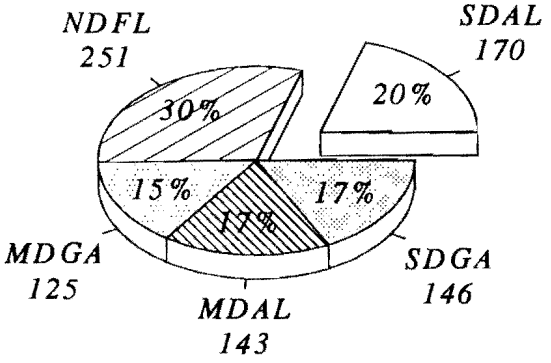
CRIMINAL FILINGS BY NATURE OF OFFENSE



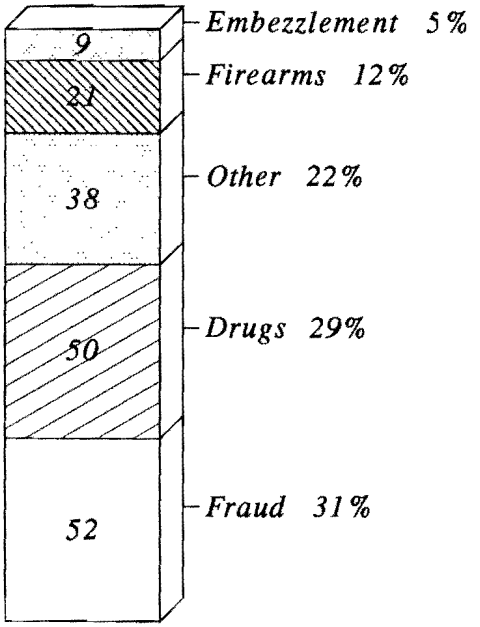
Districts 1987



SDAL 1987



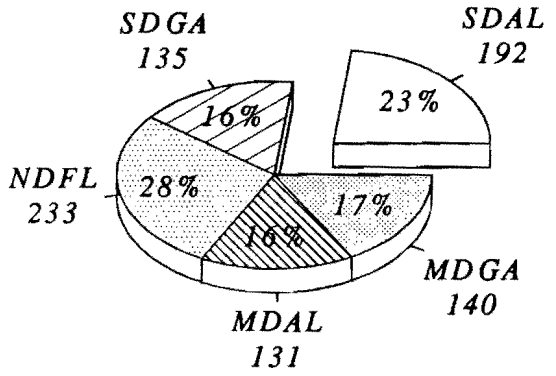
Districts 1988



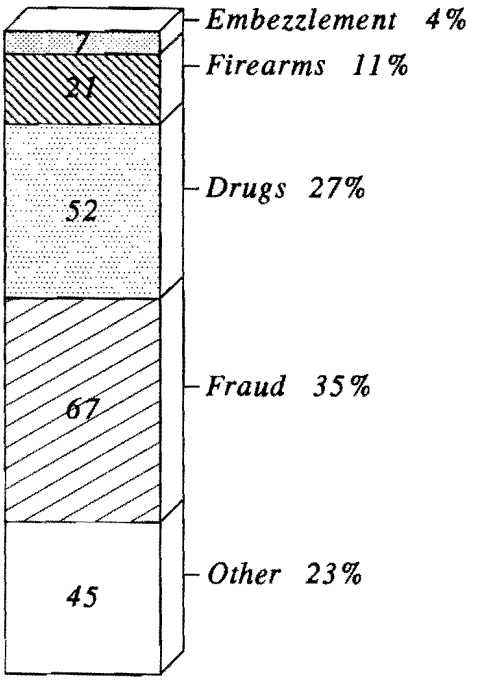
SDAL 1988

Other Series: Immigration, Vehicle Theft, Escape, Burglary, Forgery, Counterfeiting

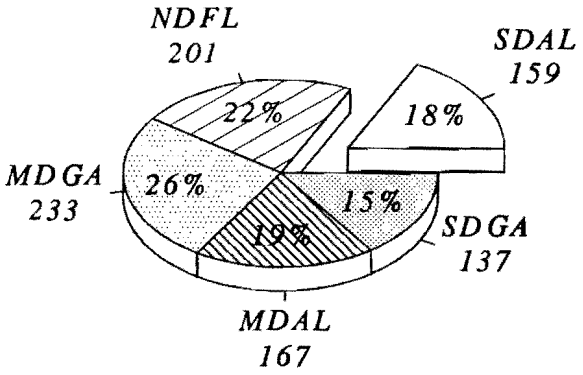
CRIMINAL FILINGS BY NATURE OF OFFENSE



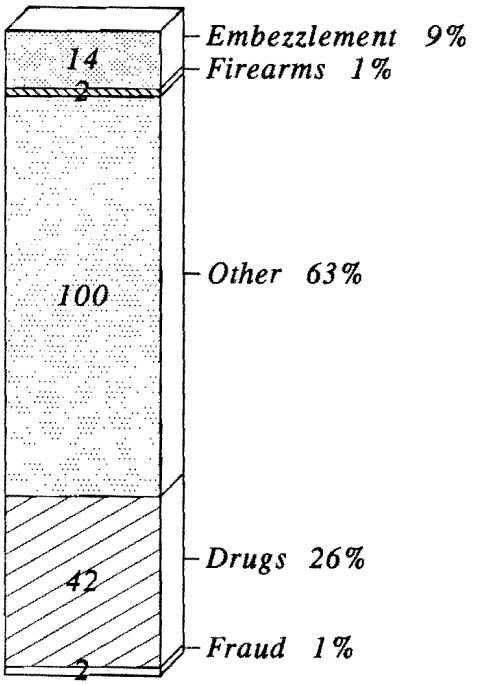
Districts 1989



SDAL 1989

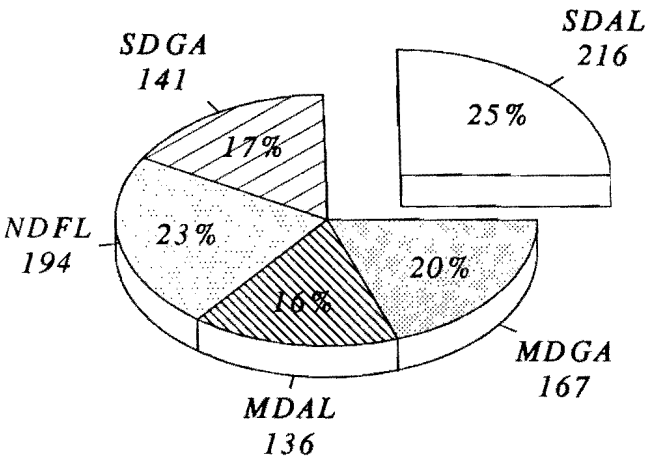


Districts 1990

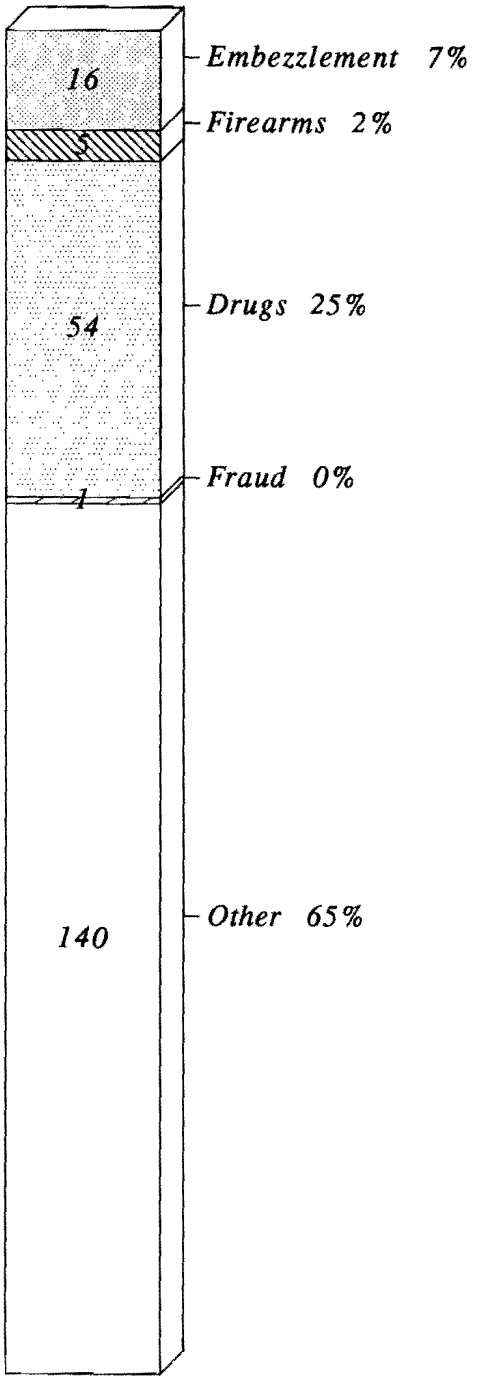


SDAL 1990

CRIMINAL FILINGS BY NATURE OF OFFENSE



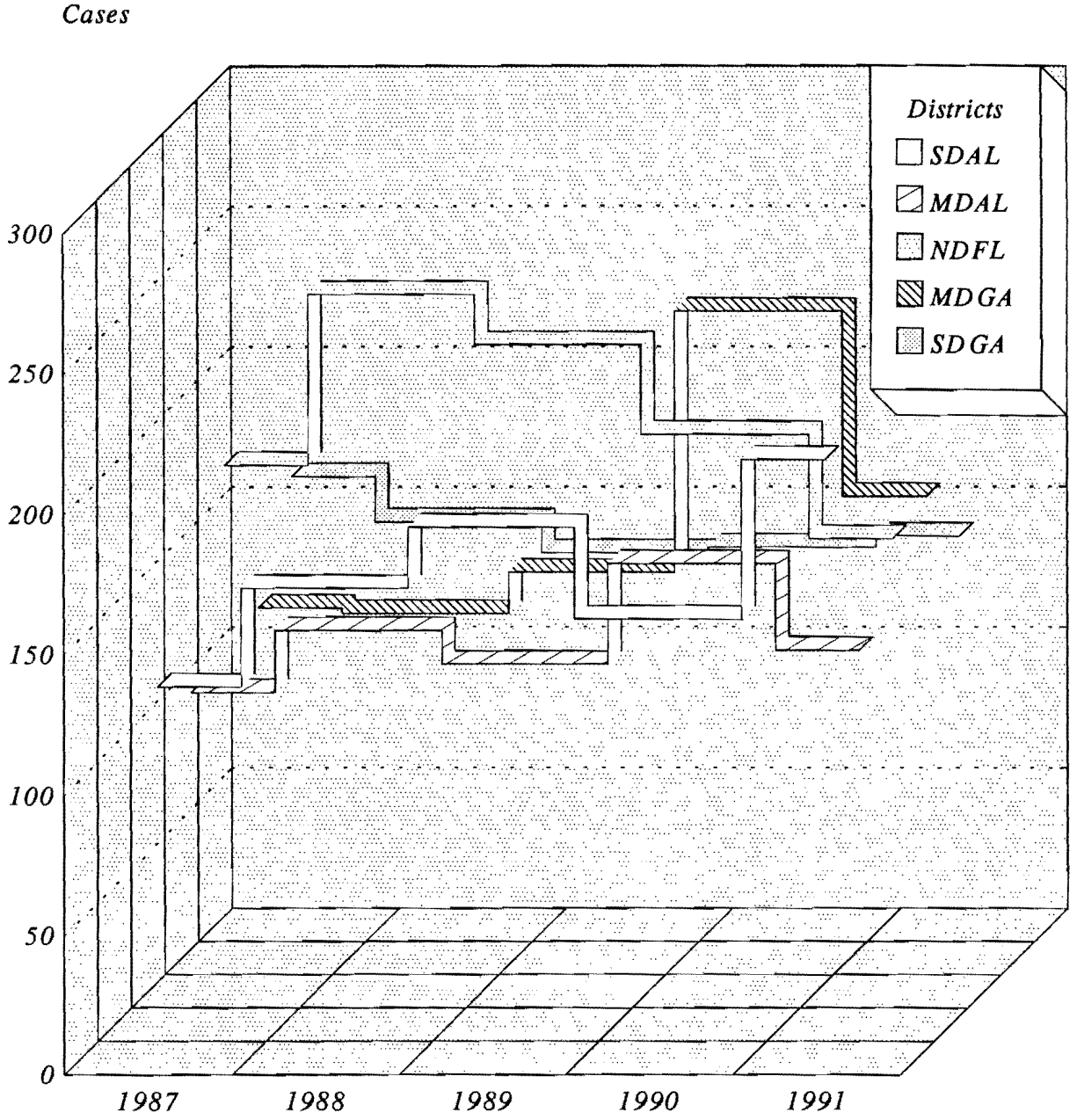
Districts 1991



SDAL 1989

1987 - 1991 CRIMINAL FILINGS

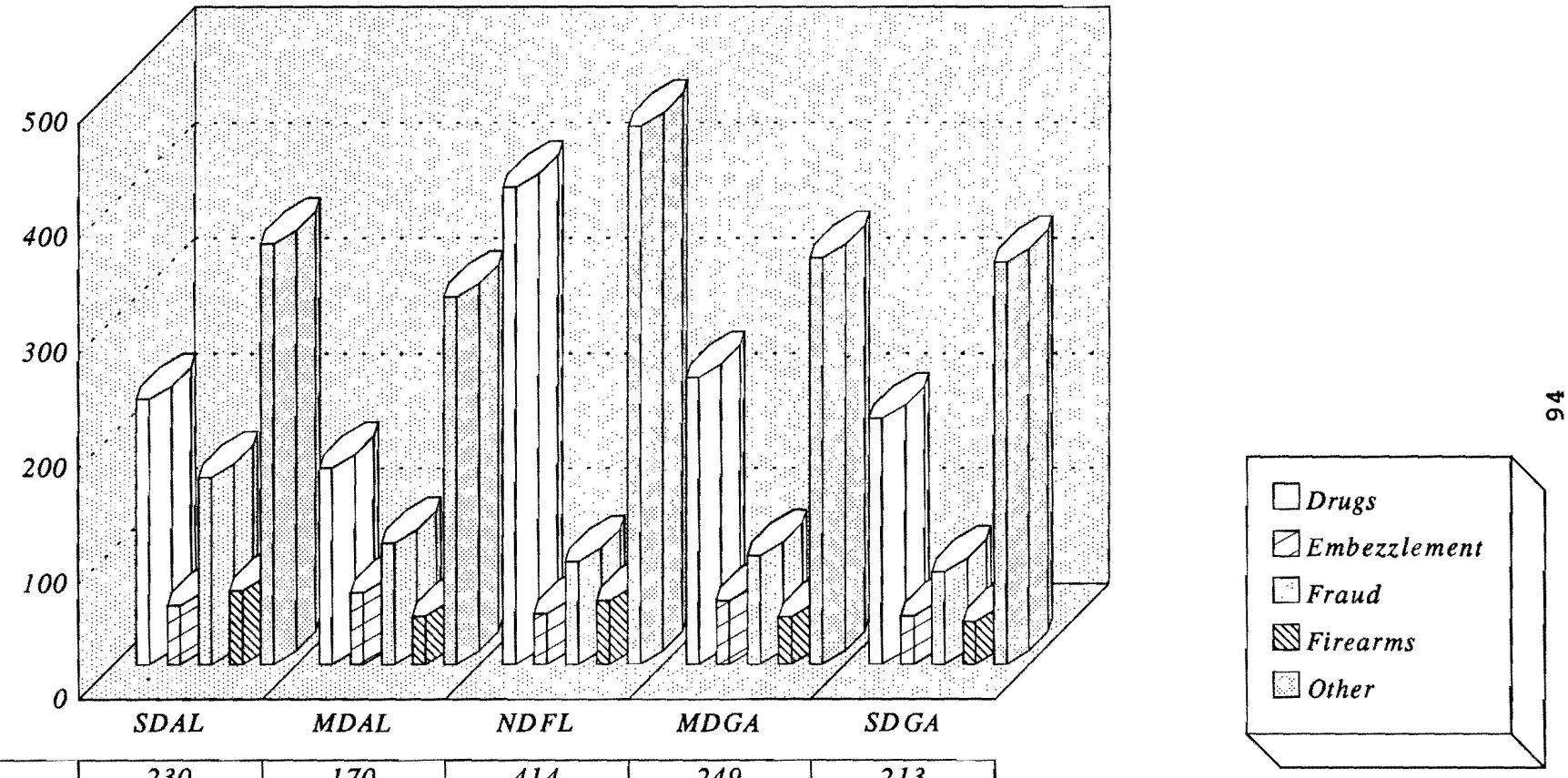
TWELVE-MONTH PERIODS ENDING JUNE 30TH



SDAL	*135*	*170*	*192*	*159*	*216*
MDAL	*121*	*143*	*131*	*167*	*136*
NDFL	*190*	*251*	*233*	*201*	*164*
MDGA	*127*	*125*	*140*	*233*	*167*
SDGA	*162*	*146*	*135*	*137*	*141*

DISTRICT CRIMINAL CASE FILINGS BY TYPE

COMPARATIVE TOTALS FOR 1987 - 1991



Drugs	230	170	414	249	213
Embezzlement	51	62	44	55	42
Fraud	162	105	89	94	80
Firearms	64	42	55	41	37
Other	365	319	467	353	349

1 OTHER SERIES: Immigration, Auto Theft, Escape, Burglary, Forgery, Counterfeiting

APPENDIX E

AN ANALYSIS OF THE CASELOAD OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

AN ANALYSIS OF THE CASELOAD OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

SCOPE AND OBJECTIVES OF THE STUDY

The objective of this study has been to identify and analyze trends in the size and nature of the case load of the United States District Court for the Southern District of Alabama. Based upon historical data from Judicial Workload Profiles and Statistical Analysis and Reports Division, Administrative Office of the United States Courts (SARD) systems, the study predicts future docket characteristics under specific conditions and identifies factors that are likely to have a significant impact on the future case load of the court and, therefore, require special management.

The data upon which the statistical analyses were based was provided by John V. O'Brien, Clerk of the United States District Court for the Southern District of Alabama, Betty J. Turner, Chief Deputy Clerk, and Lawrence P. Strahan, Operations Manager. Their information, cooperation, suggestions, and support were essential and greatly appreciated.

I. THE CHANGING STATE OF THE DOCKET: OBSERVATIONS AND ANALYSIS OF JUDICIAL WORKLOAD PROFILES

The overall state of the district court docket is changing. Overall case filings declined from a high of 1761 in SY1985 to 1392 in SY1992. Civil filings declined from a high of 1594 in SY1985 to 1148 in SY1992. There was a simultaneous decline of the civil docket as a percentage of the entire court docket. Civil cases comprised over 95% of all cases. The percentage fell to just over 82% in SY1992. Of greater interest is the fact that the number and percentage of criminal cases have been steadily increasing during this same time period. The number of criminal cases has increased from 71 in SY1981 to 244 in SY1992. In SY1981, criminal cases comprised almost 7% of the entire court docket. The percentage has grown to over 17% in SY1992. The civil filings are decreasing at an average rate of 20 cases per year, a percentage rate of 1%. Conversely, the criminal filings are increasing at an average rate of 13 cases per year, a percentage rate of 1%.

Graphs 1 through 5 are included in pages 149 through 153 of Appendix F of the Report. Graph 1 was developed from the data illustrated in Table 1 below. Graphs 2 and 3 were developed from the data illustrated in Tables 2 and 3 below. Graphs 4 and 5 were developed from the data illustrated in Tables 4 and 5 below.

KEY TO NATURE OF SUIT & OFFENSE (*)

CIVIL	CRIMINAL
A. SOCIAL SECURITY	A. IMMIGRATION
B. RECOVERY/ENFORCEMENT	B. EMBEZZLEMENT
C. PRISONER PETITIONS	C. WEAPONS & FIREARMS
D. FORFEITURES/PENALTIES/TAX	D. ESCAPE
E. REAL PROPERTY	E. BURGLARY & LARCENY
F. LABOR	F. MARIJUANA & CONTROLLED SUBST
G. CONTRACTS	G. NARCOTICS
H. TORTS	H. FORGERY & COUNTERFEITING
I. COPYRIGHT/PATENT/TRADEMARK	I. FRAUD
J. CIVIL RIGHTS	J. HOMICIDE & ASSAULT
K. ANTITRUST	K. ROBBERY
L. ALL OTHER CIVIL	L. ALL OTHER CRIMINAL FELONIES

(*) Guidance to Advisory Council Memo, Feb. 28, 1991, page 9.

Table 1
Total Number of Cases, 1981 - 1992

Year	A	B	C	D	E	F	G	H	I	J	K	L	Total
81	37	19	268	28	36	17	249	199	20	94	20	40	1027
82	51	183	334	41	37	28	301	200	8	112	9	46	1350
83	90	270	342	29	29	25	415	187	10	107	4	75	1583
84	167	293	304	34	56	29	360	193	24	133	10	63	1666
85	112	439	329	51	44	30	332	181	28	142	6	67	1761
86	110	155	363	23	51	29	347	205	29	138	8	59	1517
87	95	61	339	40	35	32	284	232	24	107	7	52	1308
88	134	89	325	45	42	43	323	344	21	112	1	69	1548
89	79	85	259	64	36	47	260	175	15	128	12	54	1214
90	87	96	300	33	24	52	257	287	53	85	6	49	1329
91	104	42	360	37	19	64	243	186	47	72	6	67	1247
92	107	64	370	38	39	76	243	176	55	135	8	81	1392

Table 2
Total Number of Civil Cases, 1981 - 1992

Year	A	B	C	D	E	F	G	H	I	J	K	L	Total
81	37	15	265	16	36	11	242	196	6	82	14	36	956
82	51	178	328	20	35	19	289	195	4	93	3	40	1255
83	90	264	336	27	29	17	403	180	7	89	0	72	1514
84	166	286	291	23	53	21	349	184	5	109	2	59	1548
85	110	421	321	36	41	20	312	168	7	99	1	58	1594
86	110	145	360	12	43	21	332	169	6	109	3	48	1358
87	95	56	339	24	34	26	276	208	4	67	1	43	1173
88	134	80	325	24	41	36	295	322	3	60	0	58	1378
89	79	78	256	43	35	36	238	145	7	61	4	40	1022
90	84	82	286	32	18	35	228	274	9	83	2	37	1170
91	104	26	323	32	13	37	198	177	3	71	3	44	1031
92	106	54	336	33	30	43	187	158	9	134	0	58	1148

Table 3
Civil Cases as a Percentage of Entire Docket Filings

Year	A	B	C	D	E	F	G	H	I	J	K	L	Total
81	3.6	1.5	25.8	1.5	3.5	1.1	23.5	19.0	0.6	8.0	1.4	3.5	93.1
82	3.8	13.1	24.2	1.5	2.6	1.4	21.4	14.4	0.3	6.9	0.2	3.0	93.0
83	5.7	16.6	21.2	1.7	1.8	1.1	25.4	11.3	0.4	5.6	0.0	4.5	95.6
84	10.0	17.1	17.4	1.4	3.2	1.3	20.9	11.0	0.3	6.5	0.1	3.5	93.0
85	6.2	23.9	18.2	2.0	2.3	1.1	17.7	9.5	0.4	5.6	0.1	3.3	90.5
86	7.3	9.6	23.7	0.8	2.8	1.4	21.8	11.1	0.4	7.2	0.2	3.2	89.5
87	7.3	4.3	25.9	1.8	2.6	2.0	21.1	15.9	0.3	5.1	0.1	3.3	89.7
88	8.7	5.2	20.9	1.6	2.6	2.3	19.0	20.8	0.2	3.9	0.0	3.7	89.0
89	6.5	6.4	21.0	3.5	2.9	3.0	19.6	11.9	0.6	5.0	0.3	3.3	84.2
90	6.3	6.2	21.5	2.4	1.4	2.6	17.1	20.6	0.7	6.2	0.2	2.8	88.0
91	8.3	2.1	25.9	2.6	1.0	3.0	15.8	14.1	0.2	5.7	0.2	3.5	82.7
92	7.6	3.9	24.1	2.4	2.2	3.1	13.4	11.3	0.6	9.6	0.0	4.2	82.4

Table 4
Total Number of Criminal Cases, 1981 - 1992

Year	A	B	C	D	E	F	G	H	I	J	K	L	Total
81	0	4	3	12	0	6	7	3	14	12	6	4	71
82	0	5	6	21	2	9	12	5	4	19	6	6	95
83	0	6	6	2	0	8	12	7	3	18	4	3	69
84	1	7	13	11	3	8	11	9	19	24	8	4	118
85	2	18	8	16	3	10	20	13	21	43	5	9	167
86	0	10	3	11	8	8	15	36	23	29	5	11	159
87	0	5	0	16	1	6	8	24	20	40	6	9	135
88	0	9	0	21	1	7	28	22	18	52	1	11	170
89	0	7	3	21	1	11	22	30	8	67	8	14	192
90	3	14	14	1	6	17	29	13	44	2	4	12	159
91	0	16	37	5	6	27	45	9	44	1	3	23	216
92	1	10	34	5	9	33	56	18	46	1	8	23	244

Table 5
Criminal Cases as a Percentage of Entire Docket Filings

Year	A	B	C	D	E	F	G	H	I	J	K	L	Total
81	0.0	0.4	0.3	1.2	0.0	0.6	0.7	0.3	1.4	1.2	0.6	0.4	6.9
82	0.0	0.4	0.4	1.6	0.1	0.7	0.9	0.4	0.3	1.4	0.4	0.4	7.0
83	0.0	0.4	0.4	0.1	0.0	0.5	0.8	0.4	0.2	1.1	0.3	0.2	4.4
84	0.1	0.4	0.8	0.7	0.2	0.5	0.7	0.5	1.1	1.4	0.5	0.2	7.1
85	0.1	1.0	0.5	0.9	0.2	0.6	1.1	0.7	1.2	2.4	0.3	0.5	9.5
86	0.0	0.7	0.2	0.7	0.5	0.5	1.0	2.4	1.5	1.9	0.3	0.7	10.5
87	0.0	0.4	0.0	1.2	0.1	0.5	0.6	1.8	1.5	3.1	0.5	0.7	10.3
88	0.0	0.6	0.0	1.4	0.1	0.5	1.8	1.4	1.2	3.4	0.1	0.7	11.0
89	0.0	0.6	0.2	1.7	0.1	0.9	1.8	2.5	0.7	5.5	0.7	1.2	15.8
90	0.2	1.1	1.1	0.1	0.5	1.3	2.2	1.0	3.3	0.2	0.3	0.9	12.0
91	0.0	1.3	3.0	0.4	0.5	2.2	3.6	0.7	3.5	0.1	0.2	1.8	17.3
92	0.1	0.7	2.4	0.4	0.6	2.4	4.0	1.3	3.3	0.1	0.6	1.7	17.5

Civil Docket Analysis

The overall civil case filings have declined from a high of 1594 in SY1985 to 1148 in SY1992, a drop of 29%. Even though there

was a slight increase in cases from SY1991 to SY1992, there has been a definite downward trend since 1985.

Graph 6 (Appendix F, page 154) depicts the percentages of each category of case by nature as a percentage of the entire docket filings. This graph provides a visual representation of the relative impacts of the various natures of cases upon the entire civil docket. The percentages cited are for SY1992.

Graphs 7 through 18 (Appendix F, pages 155 through 166), developed from the data in Table 2, depict the numbers of civil docket filings by nature of case for the years SY1981 to SY1992.

Several cases of specific nature warrant comment. Prisoner petitions made up 29.2% of the civil filings and 24.1% of the entire docket in SY1992. Graph 9 (Appendix F, page 157) depicts an increase in filings during the last three years. The combination of the high percentage of the docket and the dramatic upward trend in recent filings indicates that this nature of case warrants close monitoring during the next few statistical years to see if the trend continues.

Similarly, there is a notable upward trend in labor cases (Graph 12, Appendix F, page 160), but they comprised only 3% of the total filings and probably do not currently warrant specific attention.

Civil Rights cases (Graph 16, Appendix F, page 164) increased from 71 cases in SY1991 to 134 in SY1992, an increase of 88.7%. The cases increased from 5.7% of the entire docket filings in SY1991 to 9.6% in SY1992. While no trend can be identified, this

tremendous growth in one year may indicate that a trend is beginning to develop. The court should monitor future caseload changes to identify a trend if one develops.

Contracts case filings comprised 13.4% of the docket in SY1992. Graph 13 (Appendix F, page 161) depicts a definite downward trend since SY1983, indicating that while they still constitute a significant part of the docket, they are decreasing and will warrant less management attention in the future.

Torts comprise 11.3% of the docket. A slight downward trend is depicted on Graph 14 (Appendix F, page 162) from SY1981 to SY1986. From SY1987 to SY1992 there have been large fluctuations in the numbers of filings. No trend can be identified, but the great variability in filings warrants attention to see if an upward trend develops.

A downward trend appears in the category "All Other Civil" (Graph 18, Appendix F, page 166), but these cases comprise only 4.16% of all filings. This downward trend may be reversing, however, since the numbers of cases has increased in both SY1991 and SY1992. Since it is such a small part of the overall docket load, the increases will produce no significant problems in overall docket management.

Criminal Docket Analysis

As mentioned previously, the criminal docket is growing at a significant annual rate of 1% percent. In SY1992, criminal filings comprised 17.5% of the entire docket. Graph 19 (Appendix F, page 167) depicts the percentages of each category of case by nature as a percentage of the entire docket filings. The largest increases in criminal cases in recent years have occurred in narcotics, fraud, weapons and firearms, marijuana and controlled substances, uncategorized criminal felonies, and embezzlement. While these cases as individual categories appear to constitute relatively small percentages of the entire docket, the overall growth of the criminal filings means that their growth individual patterns deserve attention. Graphs 20 through 31 (Appendix F, pages 168 through 179), developed from the data in Table 4, depict the numbers of criminal docket filings by nature of case for the years SY1981 to SY1992.

Narcotics constituted 4.0% of the entire docket in SY 1992. There is a significant growth pattern since SY 1987. This nature of case can become a significant portion of the docket if this growth pattern continues in the future. Careful monitoring is warranted. (See Graph 26, Appendix F, page 174.)

Fraud comprises 3.3% of the docket in SY1992. There was a large increase in filings from SY1989 to SY1990, then no increase for SY1991 and SY1992. The reason for the increase should be determined if possible. If the cause for the increase is likely to be repeated in the future, this nature of case will have a

significant impact on the overall docket. (See Graph 28, Appendix F, page 176.)

There has been an exponential growth trend in filings in Weapons and Firearms cases from SY1988 to SY1991, with a very slight decline in filings in SY1992. The decrease may signify the end of the exponential growth trend. If the trend continues, this nature of case will soon comprise the majority of criminal cases and will dominate the entire docket. This nature of case must be closely monitored in the near future and reasons for the rapid growth identified. If this growth pattern continues, special managerial procedures will probably be required to handle the anticipated case loads. (See Graph 22, Appendix F, page 170.)

There was a similar exponential growth trend for Marijuana and Controlled Substances filings from SY1987 to SY1992. As with the Weapons cases above, cases of this nature will soon grow to become a major portion of the entire docket. The growth of these cases should be carefully monitored in the near future to see if the trend continues. If so, the court will probably require special managerial procedures for these cases as well. (See Graph 25, Appendix F, page 173.)

The number of Uncategorized Criminal Felony filings exhibited a linear growth trend for the period SY1983 through SY1991, with no increase in SY1992. There was a particularly large increase from SY1990 to SY1991. While the growth pattern appears to be linear in nature, the most recent statistical year's filings may signify the end of the trend. Changes in the growth of this category of case

should be monitored for the next few years to see if the growth trend has in fact ended. (See Graph 31, Appendix F, page 179.)

Embezzlement comprised only 0.71% of the entire docket in SY1992. There was a linear growth trend between SY1987 and SY1991, with a definite drop in filings in SY1992. Interestingly, there was a tremendous growth from SY1984 to SY1985, then an equally sharp decline from SY1985 to SY1987. The reasons for these wide ranges in filings may provide some insight into the current pattern of growth and decline. (See Graph 21, Appendix F, page 169.)

Summary of Civil and Criminal Docket Analysis

As can be seen from the above analysis, the state of the docket is definitely changing. The proportion of criminal cases increased from SY1983 to SY1991. Interestingly, there was very little change in the percentage growth of criminal cases in SY1992. This lack of growth may signify that the changes of the past nine years may be ending. The court should continue to monitor the percentages of the two groups of cases to see if the growth of the civil case load continues.

Five specific categories and one general category of cases were identified as having growth patterns that will cause major impact on the docket in the future if the growth patterns continue. The analysis indicates specific areas upon which the court management should focus.

II. WEIGHTED FILINGS ANALYSIS

This section of the analysis is based on the assumption that the weighting procedure used to determine the "Weighted Filings" in the "Actions Per Judgeship" section of the Judicial Workload Profile is an accurate measure of relative judge time required for cases. Table 6 illustrates the Judicial Workload Profile data used in this analysis.

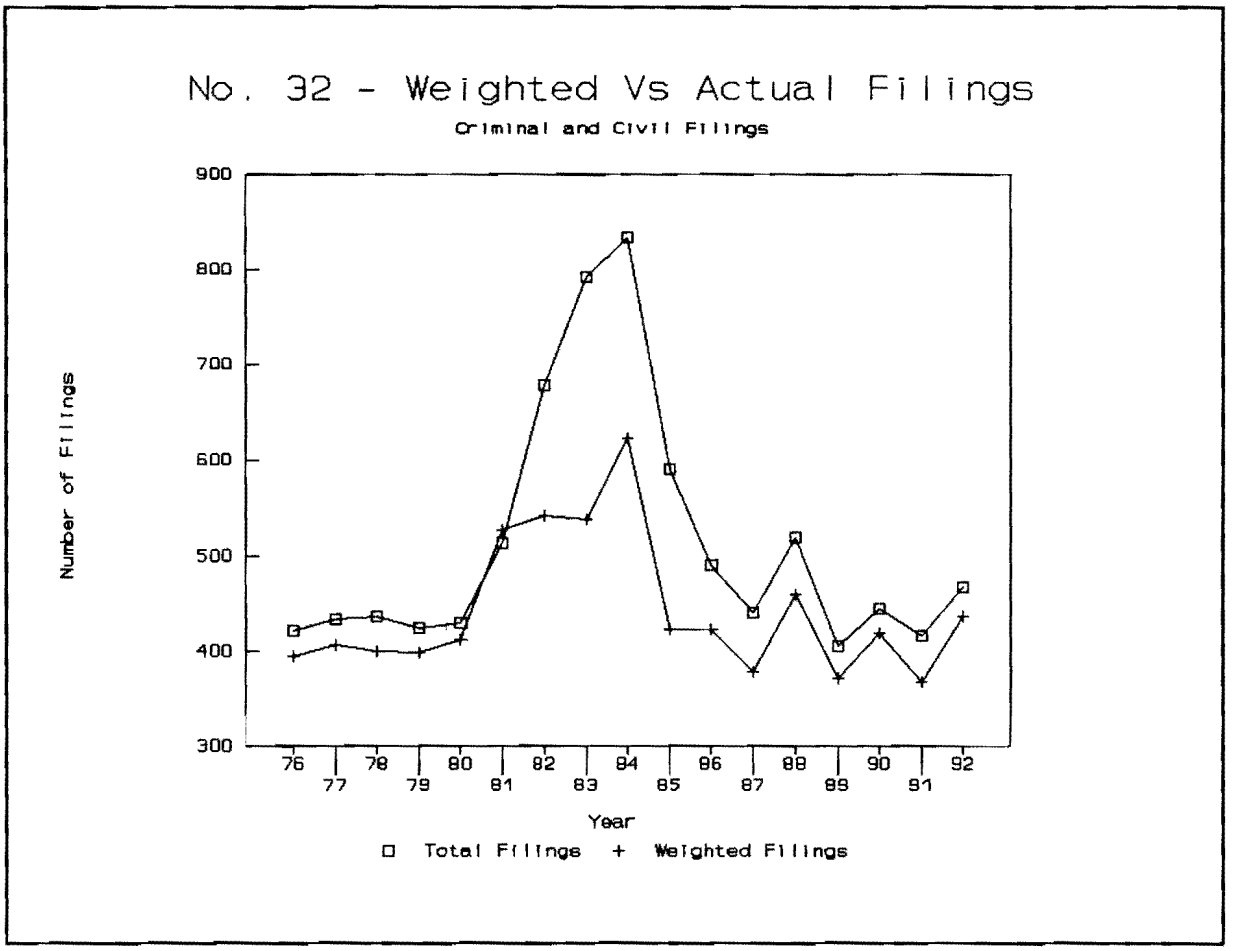
Table 6
Ratio of Total Actual Filings to Weighted Filings, 1976 - 1992

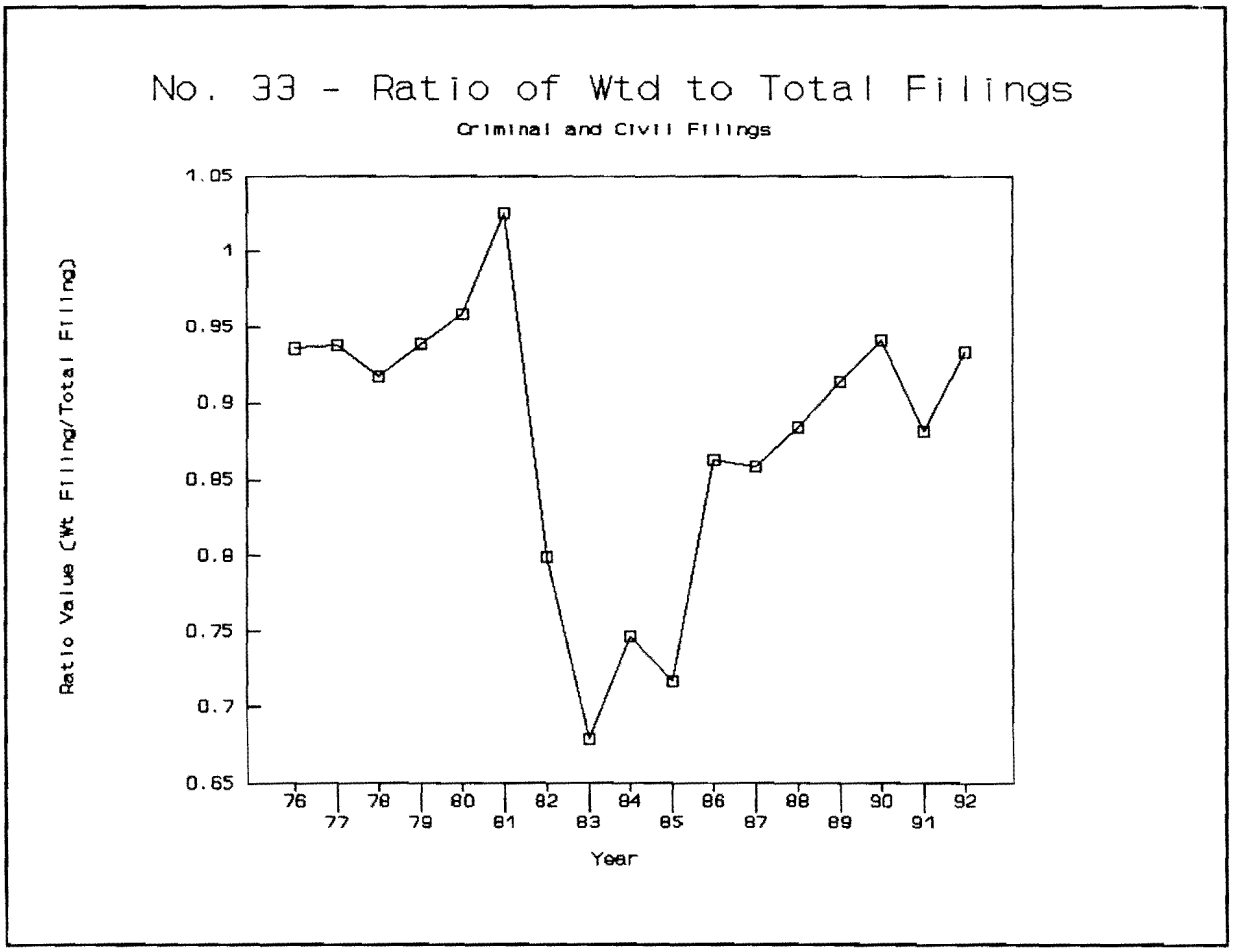
Year	Total Filings	Weighted Filings	Act Filing/Wt Filing Ratio
76	421	394	0.94
77	434	407	0.94
78	436	400	0.92
79	425	399	0.94
80	430	412	0.96
81	514	527	1.03
82	678	452	0.67
83	792	538	0.68
84	834	623	0.75
85	590	423	0.72
86	508	423	0.83
87	440	378	0.86
88	519	459	0.88
89	406	371	0.91
90	445	419	0.94
91	416	367	0.88
92	467	436	0.93

Weighted filings and unweighted total filings exhibit a similar pattern for the period SY1976 to SY1992. This similar pattern can be interpreted as meaning that the relative complexity of the docket remains unchanged. Each increase or decrease in weighted filings has a corresponding change in actual filings. These patterns are depicted in Graph 32 (page 107).

Graph 33 (page 108) depicts the ratio of weighted filings to actual filings for SY1976 to SY1992. Except for SY1980, all of the ratios are below the "overall national average weighting" value of

one. This can be interpreted as a measure of the complexity of all docket filings. If the weighted filings are less than the actual filings (the ratio is less than one), then the relative impact of the cases on the docket is "below the average" of all cases nationwide. For the period SY1976 to SY1992, the ratio is below one, indicating that the relative complexity of the docket is slightly less than the national average. However, the relative complexity increased from SY1983 through SY1990, with a slight decrease in SY1991 and subsequent increase in SY1992. Of interest is the drop in relative complexity from SY1981 to SY1982.


No. 32 - Weighted Vs Actual Filings
Criminal and Civil Filings
Number of Filings
900
800
700
600
500
400
300
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
Year
Total Filings
Weighted Filings


No. 33 - Ratio of Wtd to Total Filings
Criminal and Civil Filings
Ratio Value (Wt Filing/Total Filing)
1.05
1
0.95
0.9
0.85
0.8
0.75
0.7
0.65
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
Year

III. ANALYSIS OF STATISTICAL ANALYSIS and REPORTS DIVISION DATA

The Statistical Analysis Reports Division, Administrative Office of the United States Courts (SARD) system generates data on a monthly rather than yearly basis. SARD data were available from March, 1987, through December, 1991. Because it is monthly data the analysis identifies specific areas where management techniques can be applied on a more timely and period specific basis. It was used to extensively analyze case load trends for active and senior judges for the above mentioned time period. A specific objective was to assess the impact of the master calendar system implemented by the Court in October, 1990, in recognition of the increasing criminal caseload. As the Clerk of the Court has indicated, the court operates under a master annual calendar to facilitate advanced scheduling. Under this master calendar both criminal and civil juries are selected each month with one active judge presiding as the criminal judge and one active judge serving as backup because of the number of criminal trials each month. Refer to Section One of Appendix D, "Overview," U.S. District Court, Southern District of Alabama, Five Year Profile, 1987 - 1991.

According to the Report of the Advisory Group of the Northern District of Georgia (pp. 8-10, citing J. Shapard, How Statistics Deceive, 1991, pg. 3), tracking the "life expectancy" (or true average duration) of cases is considered by the Federal Judicial Center Research Division to be a reliable method of determining whether the court is keeping up with its caseload. Life expectancy is determined by calculating the ratio of pending cases to the

annual case terminations, measuring timeliness and assessing change in the actual case lifespan.

Civil Docket Life Expectancy Analysis

For the civil docket, the filings, terminations, and pending cases were analyzed for each active and senior judge. A total of 58 months were analyzed. Life expectancy models were developed comparing the periods before and after the present master calendar was implemented as a case management technique in the Southern District of Alabama. This analysis produced significant results. In tracking a 42-month period from March, 1987, through September, 1990, no clear trend emerged in the life expectancy of civil cases. See Graph 34A (page 112). Table 7 illustrates the linear regression analysis. The correlation coefficient for the model is -.008, indicating no positive or negative trend. The life expectancy of the docket cases remained unchanged during the time period. Since the master calendar was implemented, a marked downward trend in life expectancy has been established. See Graph 34B (page 113). Table 8 illustrates the linear regression analysis. The correlation coefficient for the model is -.501. The fact that it is negative indicates that there is a decrease in the life expectancy of the civil cases since the implementation of the master calendar. The computed "T" statistic for the regression coefficient is -4.628, which is highly significant (Prob < .01). From the analysis of the data we can (with at least 99% confidence) conclude that the master calendar has had the desired affect on the

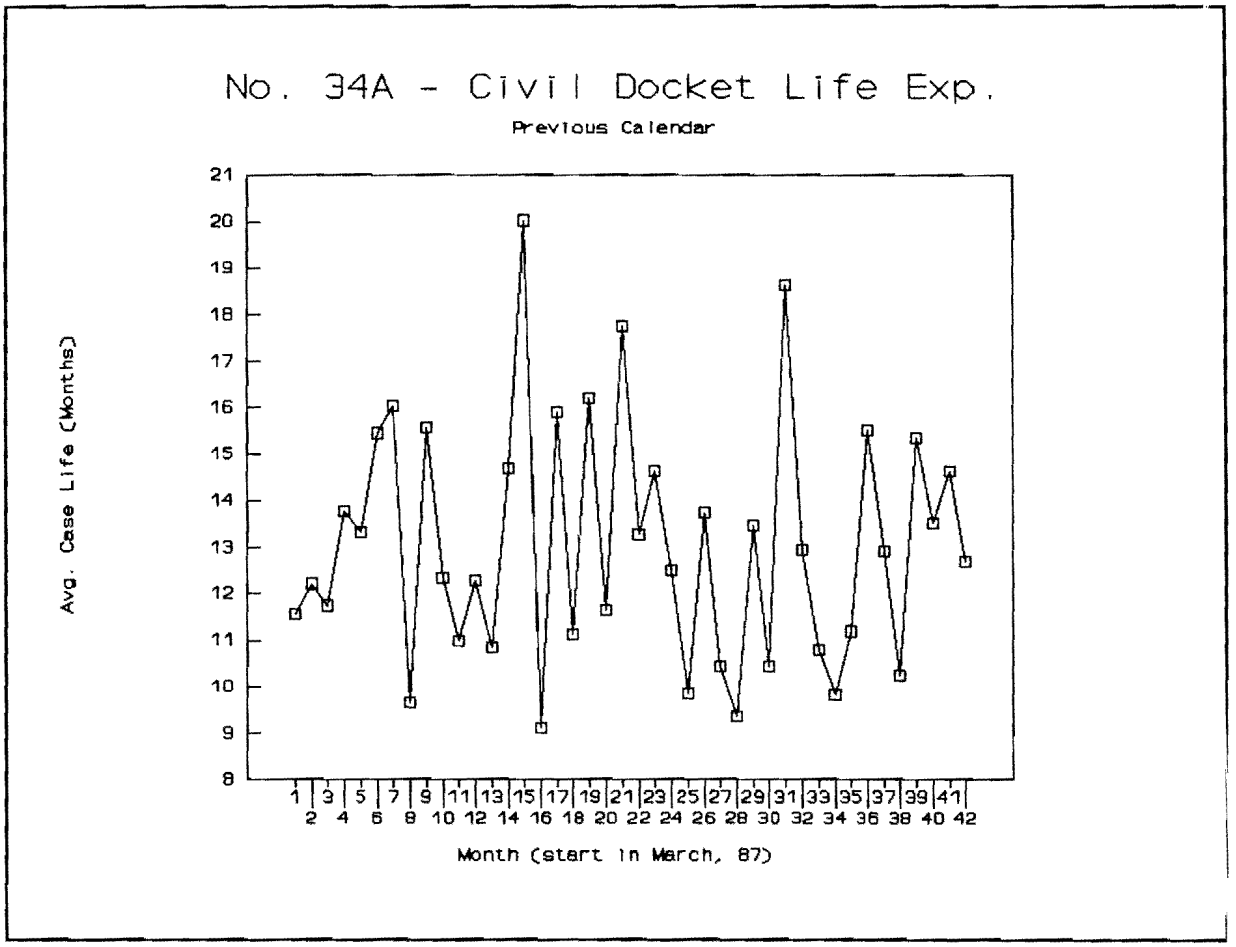
management of the civil docket. The average life expectancy of civil cases is dropping by an average of .50 month for each month that the master calendar is being used.

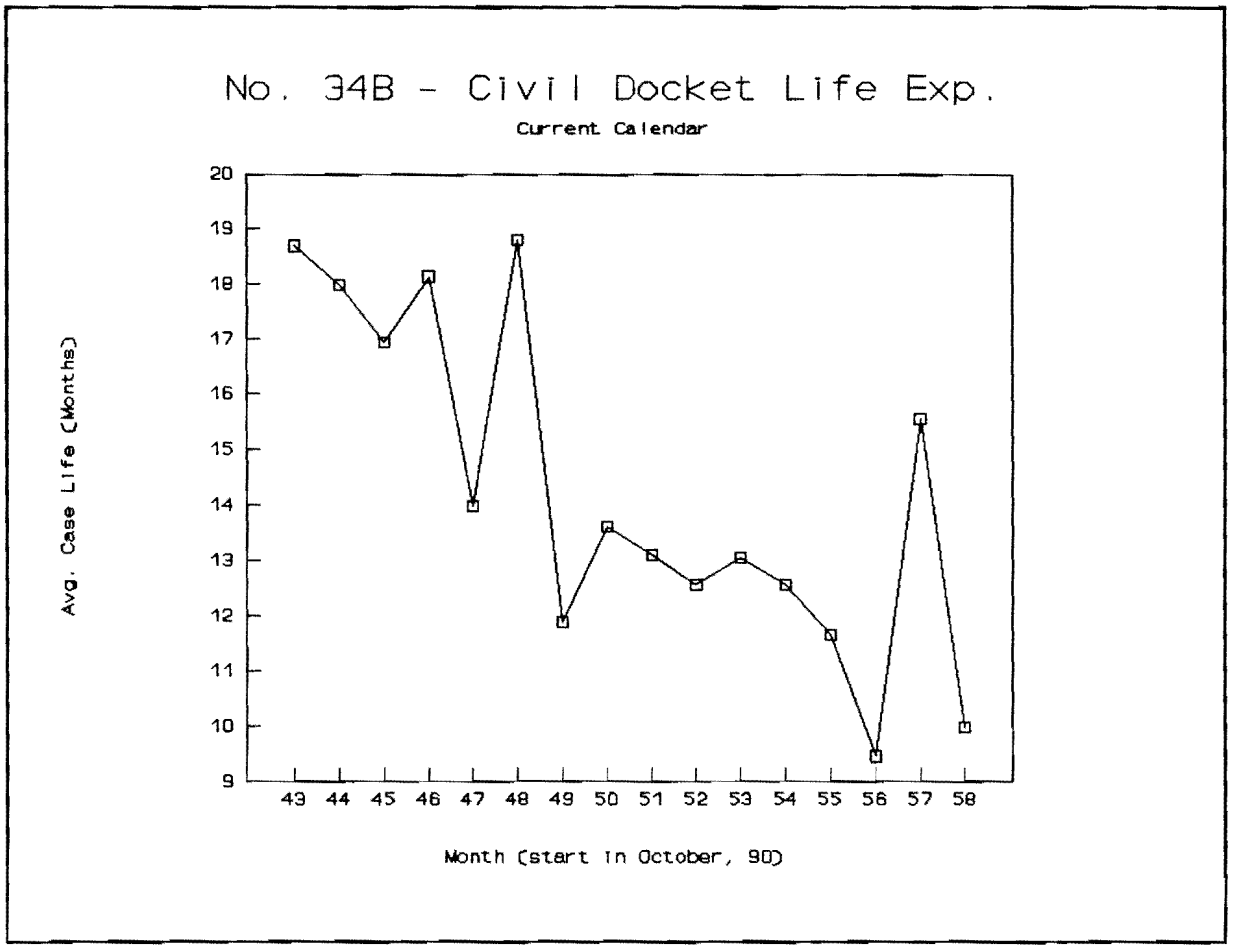
Table 7
Linear Regression Model
Civil Court Docket - Previous Calendar

Constant	13.23125
Std Err of Y Est	2.614519
R Squared	0.001488
No. of Observations	42
X Coefficient	-0.00812
Std Err of Coef.	0.03328
Calc T-Val	-0.24419
P-Val	> .10

Table 8
Linear Regression Model
Civil Court Docket - Current Calendar

Constant	39.53608
Std Err of Y Est	1.994933
R Squared	0.604773
No. of Observations	16
X Coefficient	-0.50075
Std Err of Coef.	0.10819
Calc T-Val	-4.62847
P-Val	< .01


No. 34A - Civil Docket Life Exp.
Previous Calendar
Avg. Case Life (Months)
21
20
19
18
17
16
15
14
13
12
11
10
9
8
1 3 5 7 9 11 13 15 17 19 21 23 25 27 29 31 33 35 37 39 41
2 4 6 8 10 12 14 16 18 20 22 24 26 28 30 32 34 36 38 40 42
Month (start in March, 87)

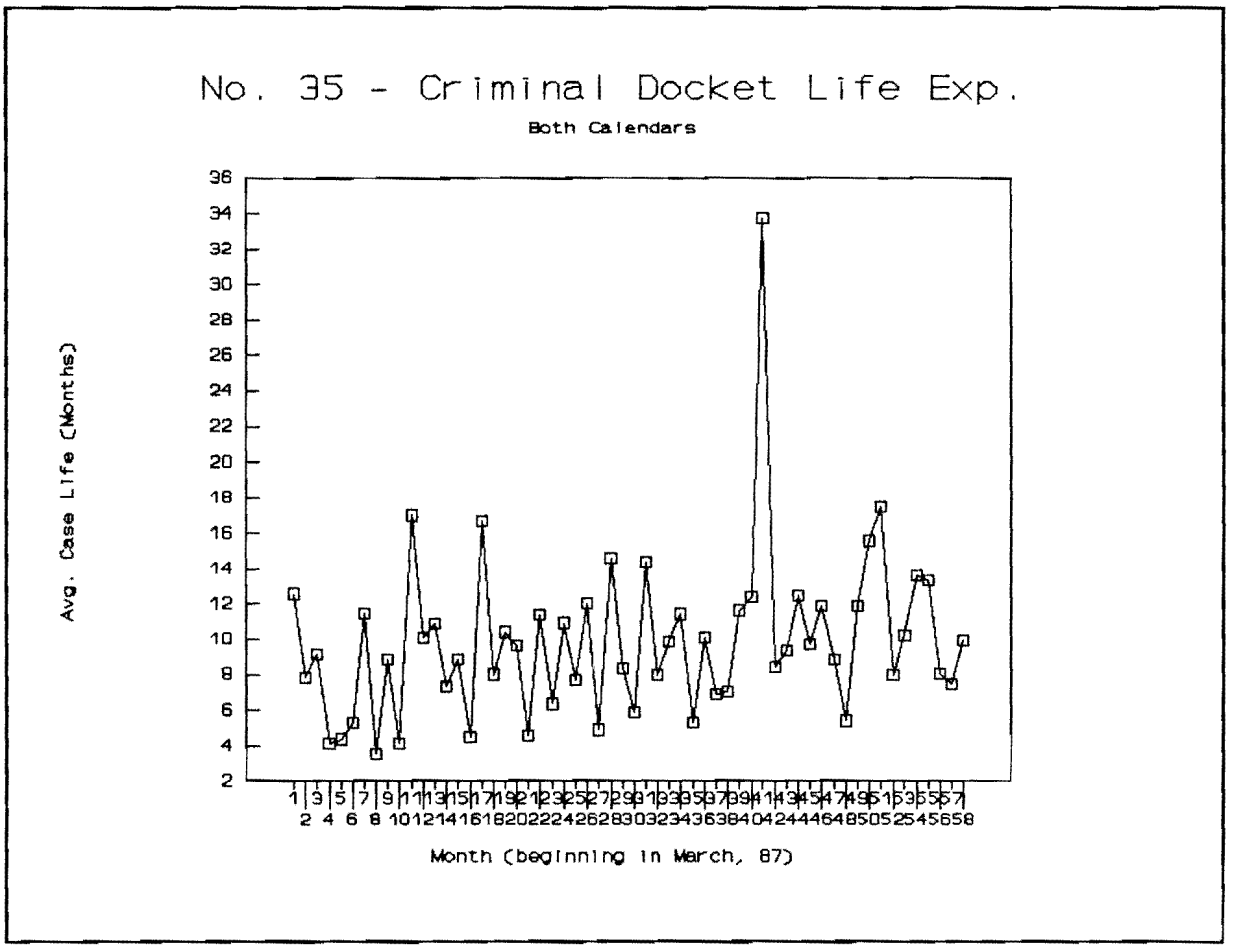

No. 34B - Civil Docket Life Exp.
Current Calendar
Avg. Case Life (Months)
20
19
18
17
16
15
14
13
12
11
10
9
43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58
Month (start in October, 90)

Criminal Docket Life Expectancy Analysis

The life expectancy of the criminal docket remains unchanged since March, 1987. See Graph 35 (page 115). Table 9 illustrates the regression analysis performed on the data. The regression coefficient is .070, which indicates very little growth in case life expectancy. This fact in itself is significant when we consider the fact that the criminal docket is growing. The court has been able to maintain a constant case life expectancy even as the work load increases. Analysis of the data for the period in which the current master calendar was in use failed to establish a significant reduction in case life expectancy. This is probably due to the fact that, as mentioned above, the criminal docket has been increasing during this time period.

Table 9
Linear Regression Model
Criminal Court Docket - Both Calendars

Constant	7.81658
Std Err of Y Est	4.55715
R Squared	0.06409
No. of Observations	58
X Coefficient	0.07000
Std Err of Coef.	0.03574
Calc T-Val	1.95850
P-Val	< .025


No. 35 - Criminal Docket Life Exp.
Both Calendars
Avg. Case Life (Months)
Month (beginning in March, 87)

Entire Docket Life Expectancy Analysis

Graph 36A (page 23) depicts the life expectancy for all cases on the docket for the period from March, 1987, to September, 1990. This time period is prior to the current master calendar implementation. Table 10 illustrates the linear regression analysis performed on the data. No increase or decrease in life expectancy can be determined. The regression coefficient of.005 indicates no significant change. There has been, however, a dramatic downward trend in life expectancy in the entire docket since the implementation of the new master calendar. See Graph 36B (page 119). Table 11 illustrates the linear regression analysis. The correlation coefficient for the model is -.433. The fact that it is negative indicates that there is a decrease in the life expectancy of all cases since the implementation of the master calendar. The computed "T" statistic for the regression coefficient is -5.897, which is highly significant (Prob < .01). From the analysis of the data we can (with at least 99% confidence) conclude that the master calendar has had the desired affect on the management of the entire court docket. The average life expectancy of all cases is dropping by an average of .433 month for each month that the master calendar is being used.

Because there is no apparent change in life expectancy of criminal cases and because the numbers of criminal filings are increasing, the downward trend in the life expectancy of all docket cases could end if the criminal docket is not monitored carefully for ways to reduce life expectancy. Simply stated, the increase in

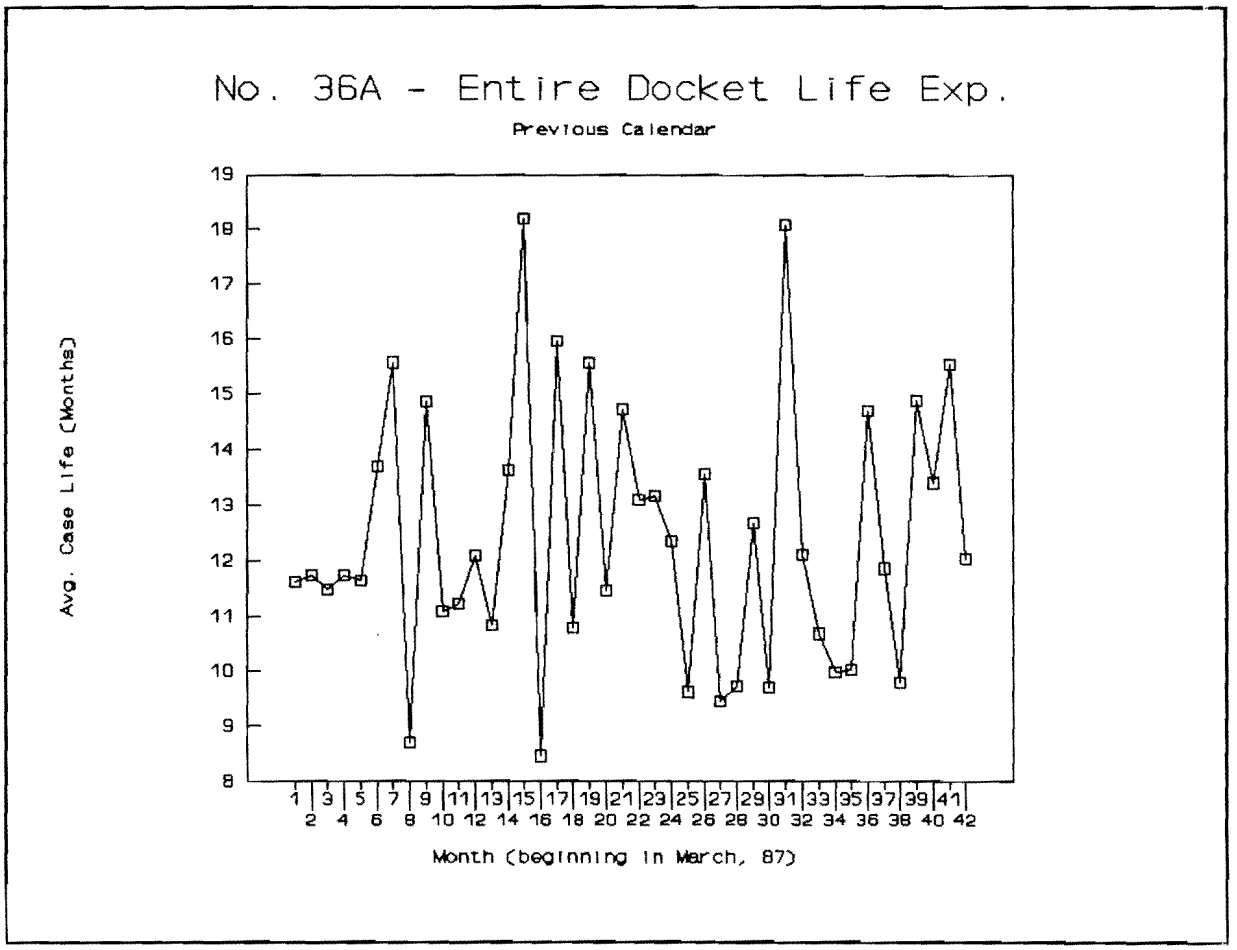
volume of criminal cases could offset the benefits gained by the implementation of the master calendar.

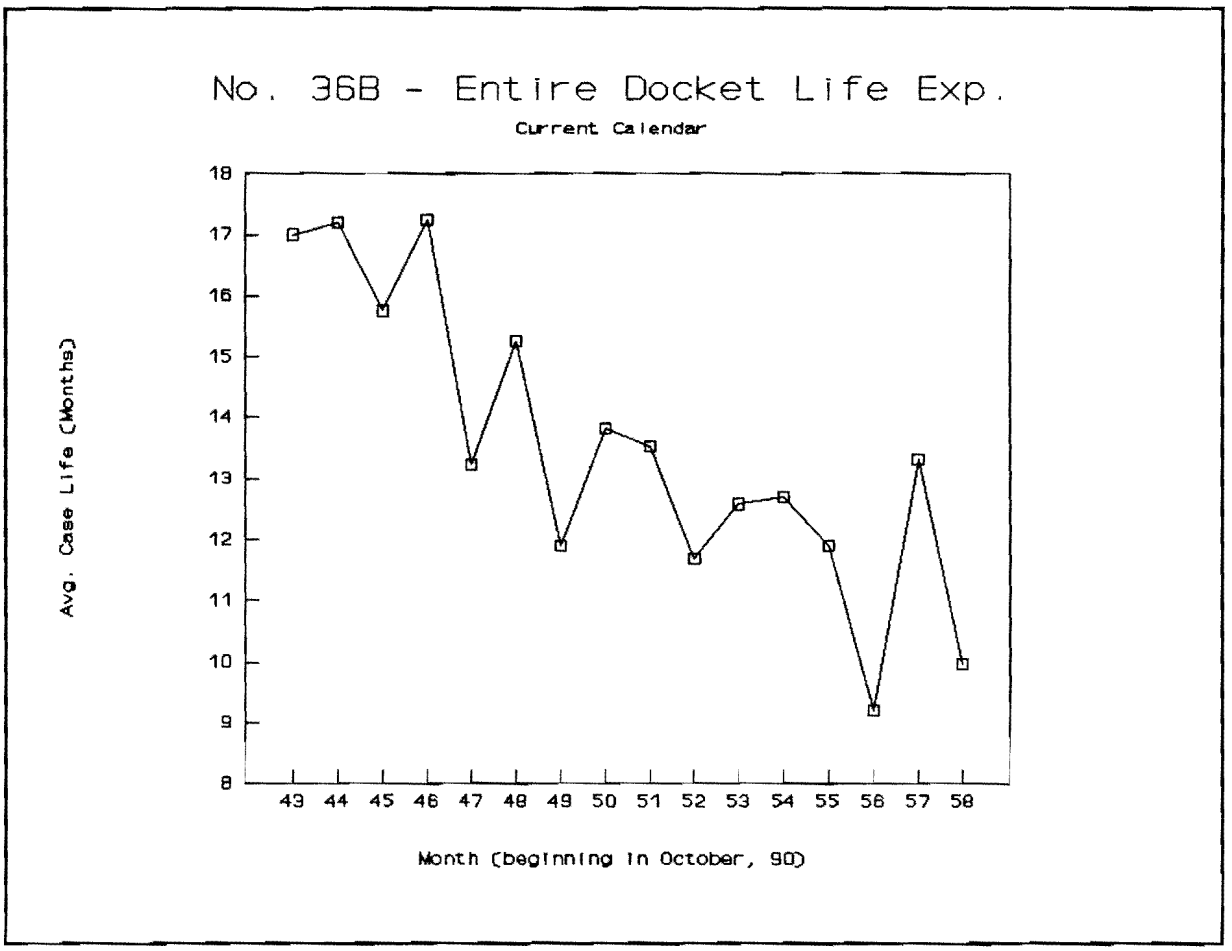
Table 10
Linear Regression Model
Entire Court Docket - Previous Calendar

Constant	12.31096
Std Err of Y Est	2.405476
R Squared	0.000730
No. of Observations	42
X Coefficient	0.005235
Std Err of Coef.	0.030622
Calc T-Val	0.171000
P-Val	< .10

Table 11
Linear Regression Model
Entire Court Docket - Current Calendar

Constant	35.35957
Std Err of Y Est	1.352574
R Squared	0.712942
No. of Observations	16
X Coefficient	-0.432540
Std Err of Coef.	0.073353
Calc T-Val	-5.896670
P-Val	< .01


No. 36A - Entire Docket Life Exp.
Previous Calendar
Avg. Case Life (Months)
19
18
17
16
15
14
13
12
11
10
9
8
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42
Month (beginning in March, 87)


No. 36B - Entire Docket Life Exp.
Current Calendar
Avg. Case Life (Months)
18
17
16
15
14
13
12
11
10
9
8
43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58
Month (beginning in October, 90)

IV. CRIMINAL DOCKET LIFE EXPECTANCY ANALYSIS BY DEFENDANT

For the criminal docket, the filings, terminations, and pending cases per defendant were analyzed. The number of defendants per case was also analyzed. A total of 122 months were analyzed, beginning in November, 1981.

Average Number of Defendants Per Case

Graph 37 (page 122) illustrates the average number of defendants per case for the period. Table 12 illustrates the regression analysis on the data. The regression coefficient of 0.0023 indicates a very slight upward trend in the number of defendants per case. However, this has no statistical significance and cannot be interpreted in any manner other than as a general indicator of the number of defendants per case.

Table 12
Linear Regression Model
Number of Defendants Per Case

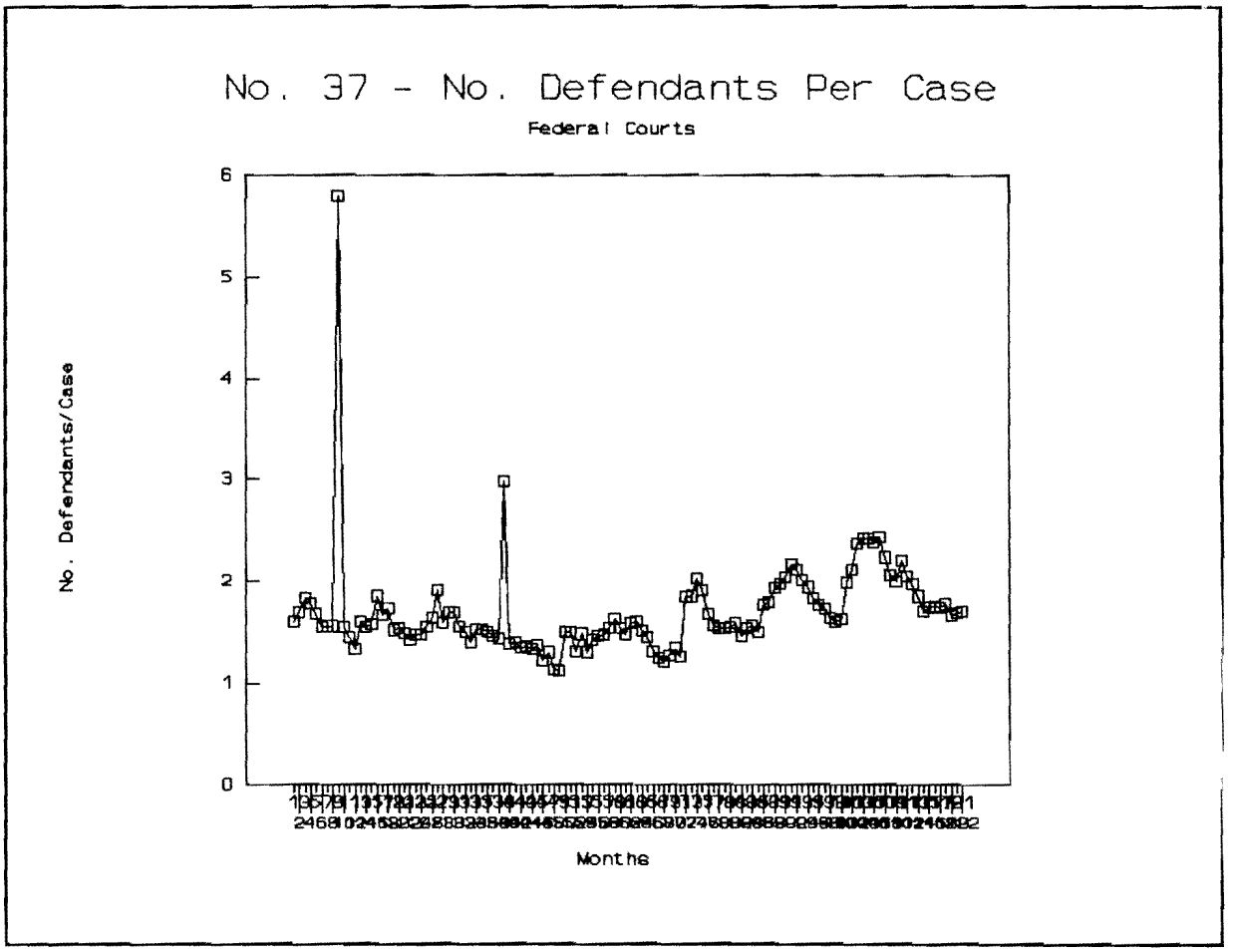
Constant	1.55596
Std Err of Y Est	0.47713
R Squared	0.02924
No. of Observations	122
X Coefficient	0.00233
Std Err of Coef.	0.00123
Calc T-Val	1.90130
P-Val	> .05

Graph 37 depicts a more pronounced upward trend for the past six years (72 months) beginning in December, 1985. Table 13 presents the regression analysis. The regression coefficient of 0.00974 indicates a very slight upward trend in the number of defendants per case. This is a statistically significant trend. More important for management purposes is the pattern of growth.

Beginning with period 60 (October, 1986) there is a definite pattern of declining numbers of defendants per case followed by a sharp increase. The most recent months (periods 108 - 122) indicate a decline for the fourth time since 1986. The question that must be addressed at this time is whether the pattern of rapid growth will repeat itself in the next few months. This question can best be answered by determining the factors and conditions that caused the pattern of growth and decline over the past six years. If these conditions will exist again in the near future we can expect the rapid growth again. This growth will definitely impact upon the caseload of the criminal docket as well as affect the life expectancy of criminal cases.

Table 13
Linear Regression Model
Number of Defendants Per Case
Since December, 1985

Constant	0.89412
Std Err of Y Est	0.23336
R Squared	0.48816
No. of Observations	80
X Coefficient	0.00974
Std Err of Coef.	0.00113
Calc T-Val	8.62513
P-Val	< .01


No. 37 - No. Defendants Per Case
Federal Courts
No. Defendants/Case
0
1
2
3
4
5
6
Months

Life Expectancy Analysis By Defendant

The life expectancy of cases by defendant was conducted in a manner similar to the Civil and Criminal Docket life expectancy analyses. The ratio of Number of Defendants Pending at the end of each month to the Number of Defendants Disposed of during the month was calculated. Graph 38 (page 125) illustrates the trend of life expectancy by defendant. As with the number of defendants per case, there appears to be a very slight upward trend, particularly for the most recent six years. Tables 14 and 15 provide the statistical analysis.

Table 14
Linear Regression Model
Life Expectancy By Defendant

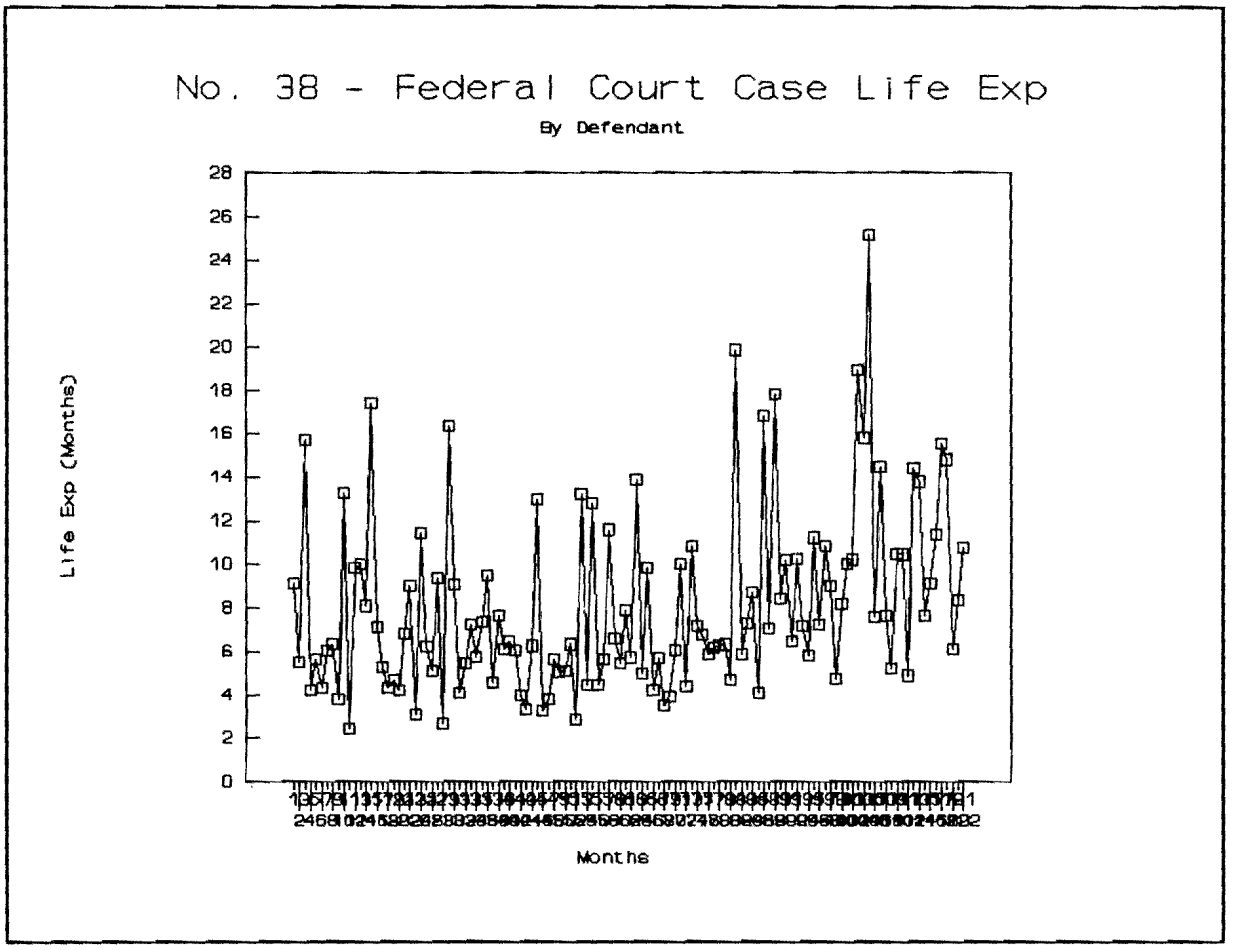
Constant	5.88894
Std Err of Y Est	3.96801
R Squared	0.09741
No. of Observations	122
X Coefficient	0.03671
Std Err of Coef.	0.01020
Calc T-Val	3.59875
P-Val	< .01

Table 15
Linear Regression Model
Life Expectancy By Defendant
Since December, 1985

Constant	2.39603
Std Err of Y Est	4.03624
R Squared	0.16229
No. of Observations	80
X Coefficient	0.07596
Std Err of Coef.	0.01954
Calc T-Val	3.88733
P-Val	< .01

The regression analysis indicates a very slight but definite upward trend in the life expectancy by defendant for the past six years. This upward trend persists even after the implementation of

the master calendar. The upward trend is so small (an average increase of .07 defendants per month) that it will have no practical effect upon the management of the criminal docket for the near future.

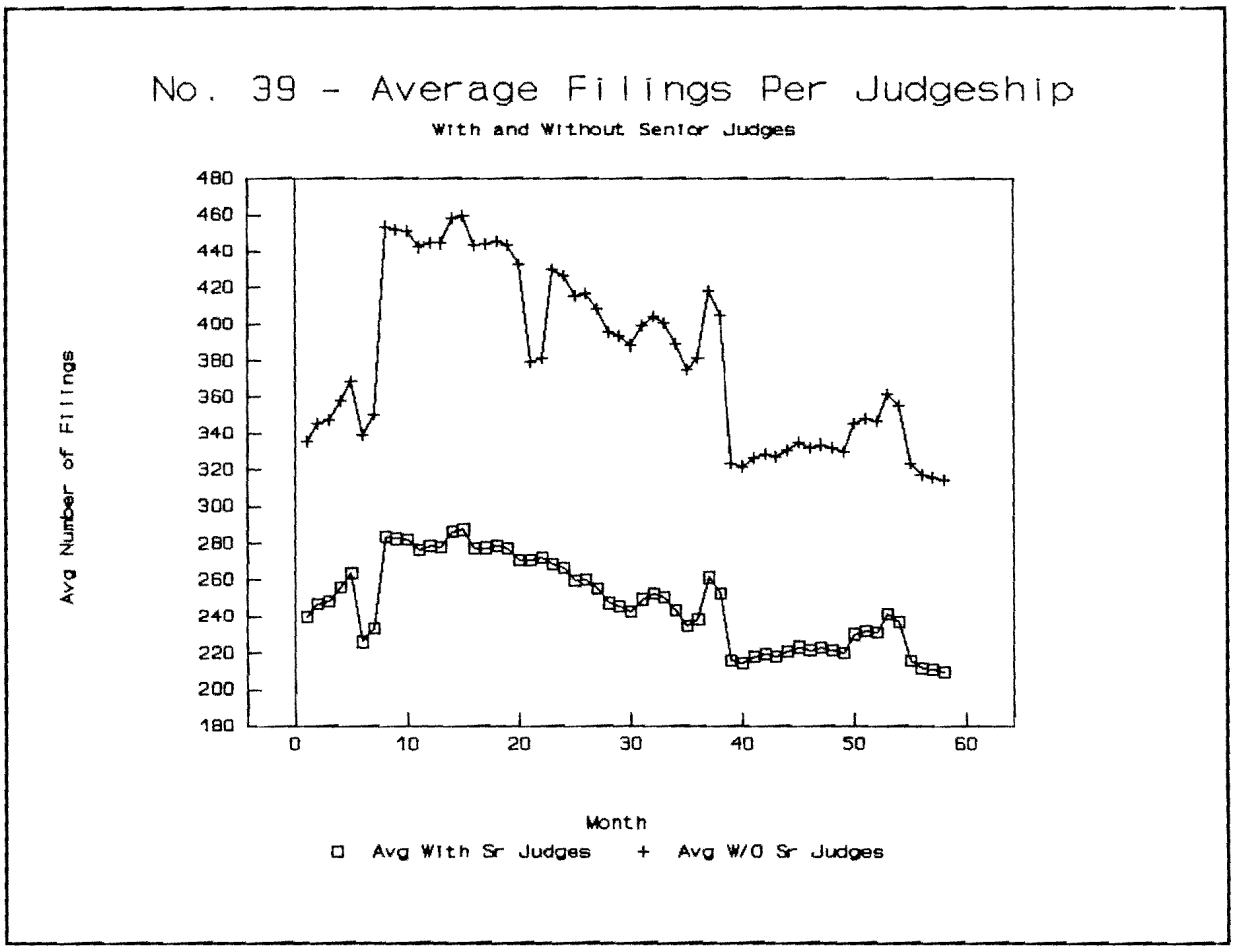

No. 38 - Federal Court Case Life Exp
By Defendant
Life Exp (Months)
28
26
24
22
20
18
16
14
12
10
8
6
4
2
0
Months

V. IMPACT OF SENIOR JUDGES ON COURT DOCKET MANAGEMENT

The SARD data was used to analyze the impact of the Senior Judges on the overall management of the court docket. For each month the number of active judges and active senior judges was determined. The percent of the entire number of available judges that was comprised of senior judges was then calculated. For example, if there were three judges and two senior judges, the senior judges comprised 40% of the available judges (2/5 = .4). Next, the average number of pending cases per judge was calculated by dividing the total number of pending cases each month by the number of available judges. This average number of pending cases per judge was then "inflated" by the percent of available judges that was comprised of senior judges to calculate the "average number of pending cases per judge if no senior judges were available." For example, if the average number of pending cases per judge was 250 for a particular month, and if the senior judges comprised 40% of the available judges, the 250 pending cases were multiplied by 140% to calculate an "average" of 350 pending cases per judge. Graph 39 (page 128) depicts the average pending cases per judge for both actual data and "inflated" data, providing a relative indication of the increase in pending cases per judge that would be experienced if the senior judges were not available. There can be no doubt that the senior judges have a definite positive impact on the management of the court docket.

The above "inflation" technique assumes a linear relationship between case loads for active and senior judges. This is, in fact,

not the case. Senior judges have typically carried a proportionately smaller case load than their active counterparts. For example, even though the senior judges may constitute 40% of the available judges for a particular month, they do not typically carry 40% of the entire court docket. For this reason the "inflation" procedure described above tends to somewhat overstate the impact of the senior judges on the docket management. However, the intent of this analysis is to illustrate the relative contribution of the senior judges on the overall court docket management rather than compute exactly how they contribute to case load management. The dynamic nature of the senior judge case load makes precise "inflation" impractical.


No. 39 - Average Filings Per Judgeship
With and Without Senior Judges
Avg Number of Filings
480
460
440
420
400
380
360
340
320
300
280
260
240
220
200
180
0
10
20
30
40
50
60
Month
Avg With Sr Judges
Avg W/O Sr Judges

VI. IMPACT OF PRO SE LITIGATION ON CASELOAD MANAGEMENT

While all the attorneys on the Advisory Group were asked to comment on the impact of pro se litigation (as reported in the previous section), most of the information and extended comments were provided by Magistrate Judge William Cassady and C.E. Jones, Warden of the Holman Unit of the State of Alabama Department of Corrections. As reported in the first phase of this study, Prisoner Petitions, which make up the great majority of pro se filings, in SY 1991 accounted for nearly 26% of the overall civil and criminal filings combined and over 31% of the civil filings. The 323 filings represented 125 more than the next largest category of civil filings (contract cases). According to data provided by Magistrate Judge Cassady, Prisoner Petitions constitute 29% of the magistrates' workload. (See Graphs 40 through 42, pages 132-134.)

Filed by inmates, many of whom are illiterate, the prisoner litigation typically seeks relief from alleged deprivations of federally guaranteed rights during prosecution or while in custody. Even though the complaints are often unartfully drawn and conclusory, they must be assessed by the court under federal notice pleading standards and often present complicated claims.

The role of the magistrate judges in dealing with Prisoner Petitions is substantial. When filed, the petitions are placed on the dockets of both the district court judges and the magistrates. Petitions that survive the magistrates' initial reviews, summary judgment proceedings, and evidentiary hearings, especially those that are set for jury trials, have a substantial impact on the

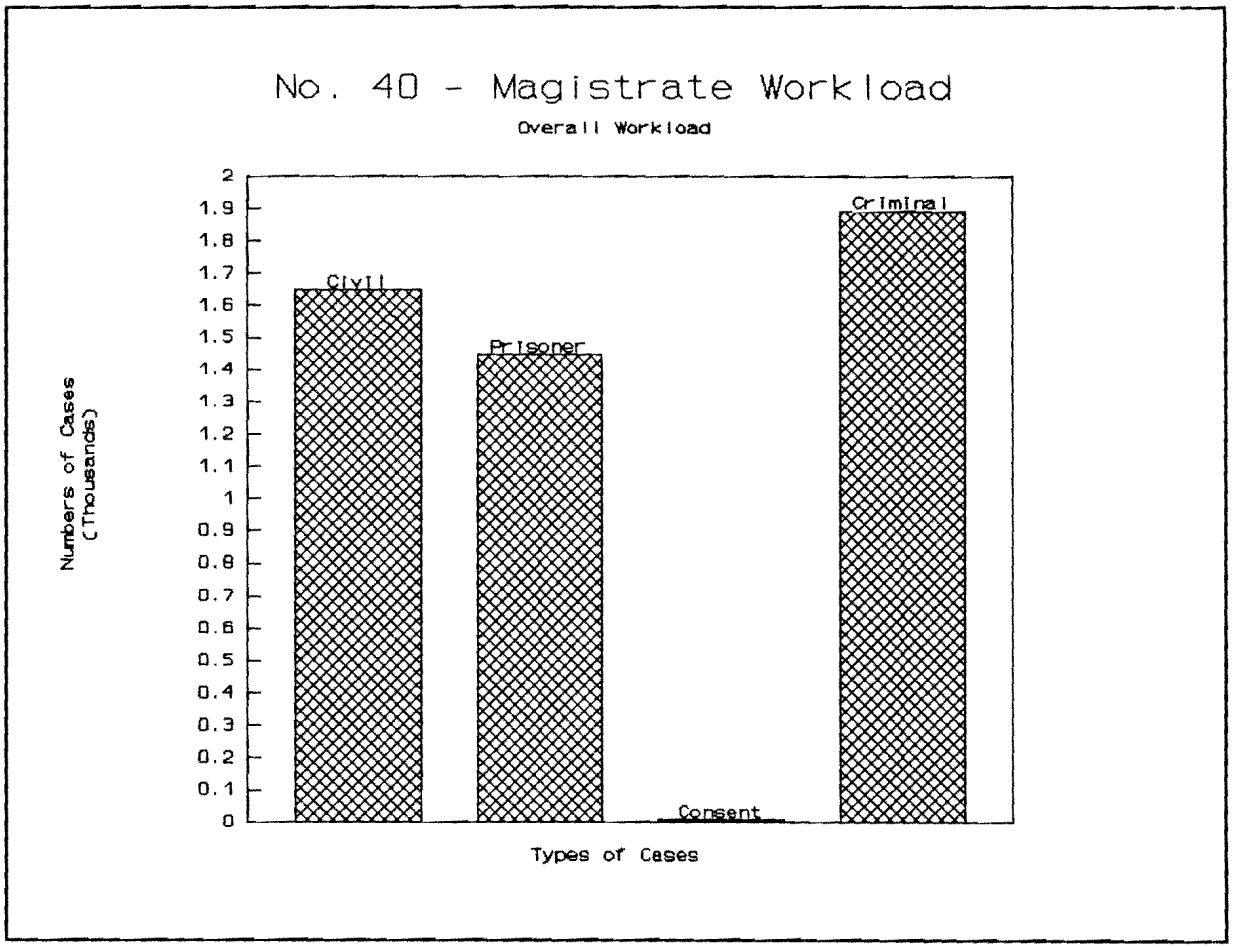
workload of the district court judges, requiring considerable duplicative effort and de novo review of the record. One full-time law clerk is currently assigned to the prisoner cases.

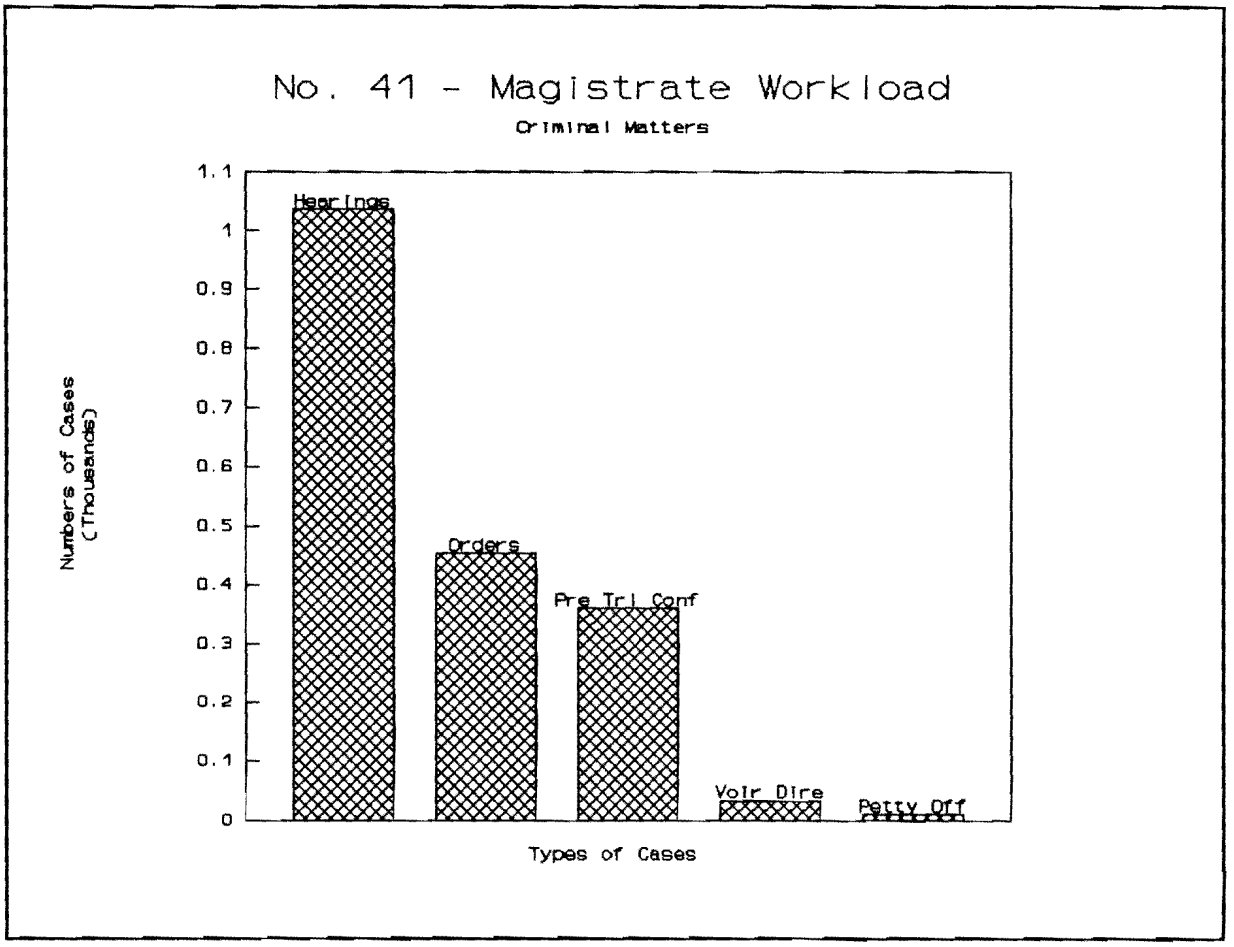
Some suggestions were made to improve generally the capacity of the magistrates to provide support to the district court judges in caseload management. The need for an additional law clerk to conduct legal research and draft opinions was noted. It was suggested, also, that expanding magistrate jurisdiction in both criminal and civil matters, as well as encouraging litigants to take advantage of the magistrates' civil consent jurisdiction, be considered. In addition, it was suggested that the process of assigning cases to the magistrate judges and the standards of district court review of magistrates' decisions on dispositive motions be considered to achieve more uniformity and to minimize duplicative judicial efforts.

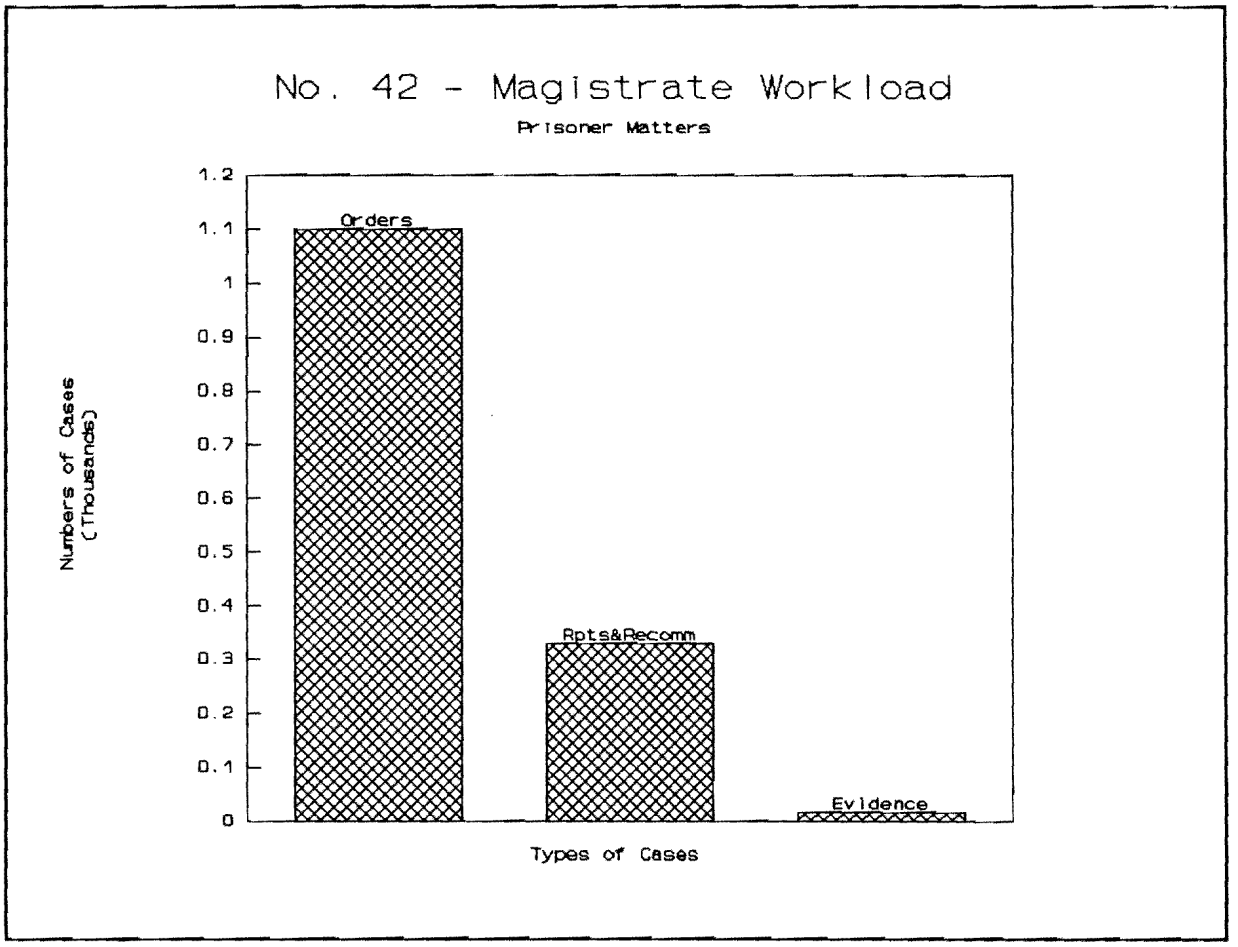
Warden Jones reported that the Holman prison population will remain steady for the foreseeable future. He noted a significant decline in §1983 Civil Rights actions over the last several years. According to information furnished by Warden Jones (see Graph 43, page 135), while 78 such actions were filed in 1988, only 25 had been filed through mid-September of 1992. Most of these were in the nature of due process challenges to administrative regulations rather than the numerous actions alleging use of unnecessary force that characterized prisoner filings five years ago.

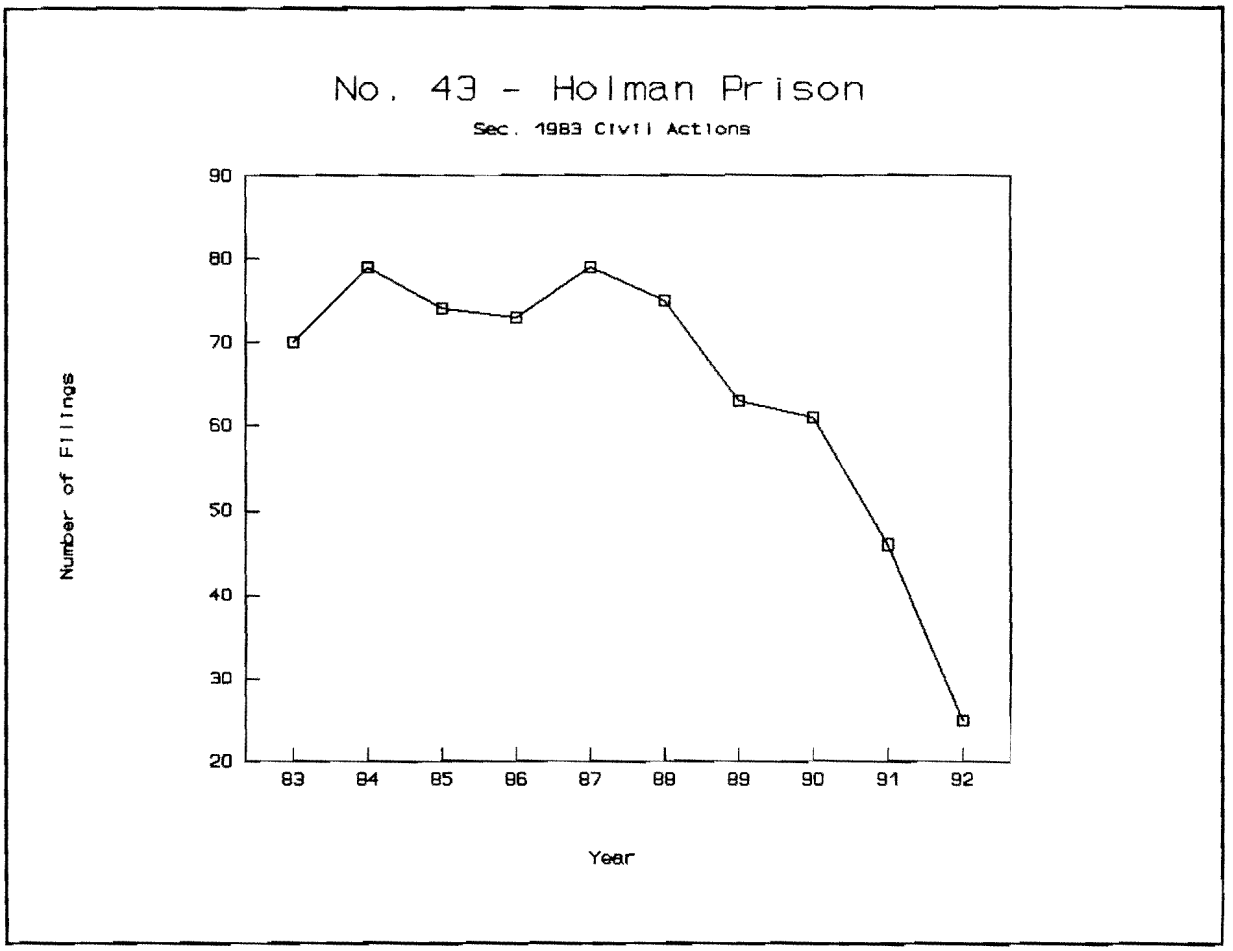
Warden Jones stated that given the number of prisoner petitions filed, the court is doing a good job processing them. He

cited specifically the designation of on-site conference rooms at Holman for evidentiary hearings - rather than a trip to Mobile - as an effective measure for reducing the number of filings. That procedure, moreover, allows employee witnesses to remain on the premises rather than go to Mobile to testify. He indicated a preference for disposing of baseless, unfounded cases through summary judgment rather than being assigned to a judge for a full hearing.


No. 40 - Magistrate Workload
Overall Workload
Numbers of Cases (Thousands)
2
1.9
1.8
1.7
1.6
1.5
1.4
1.3
1.2
1.1
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
Civil
Prisoner
Consent
Criminal
Types of Cases

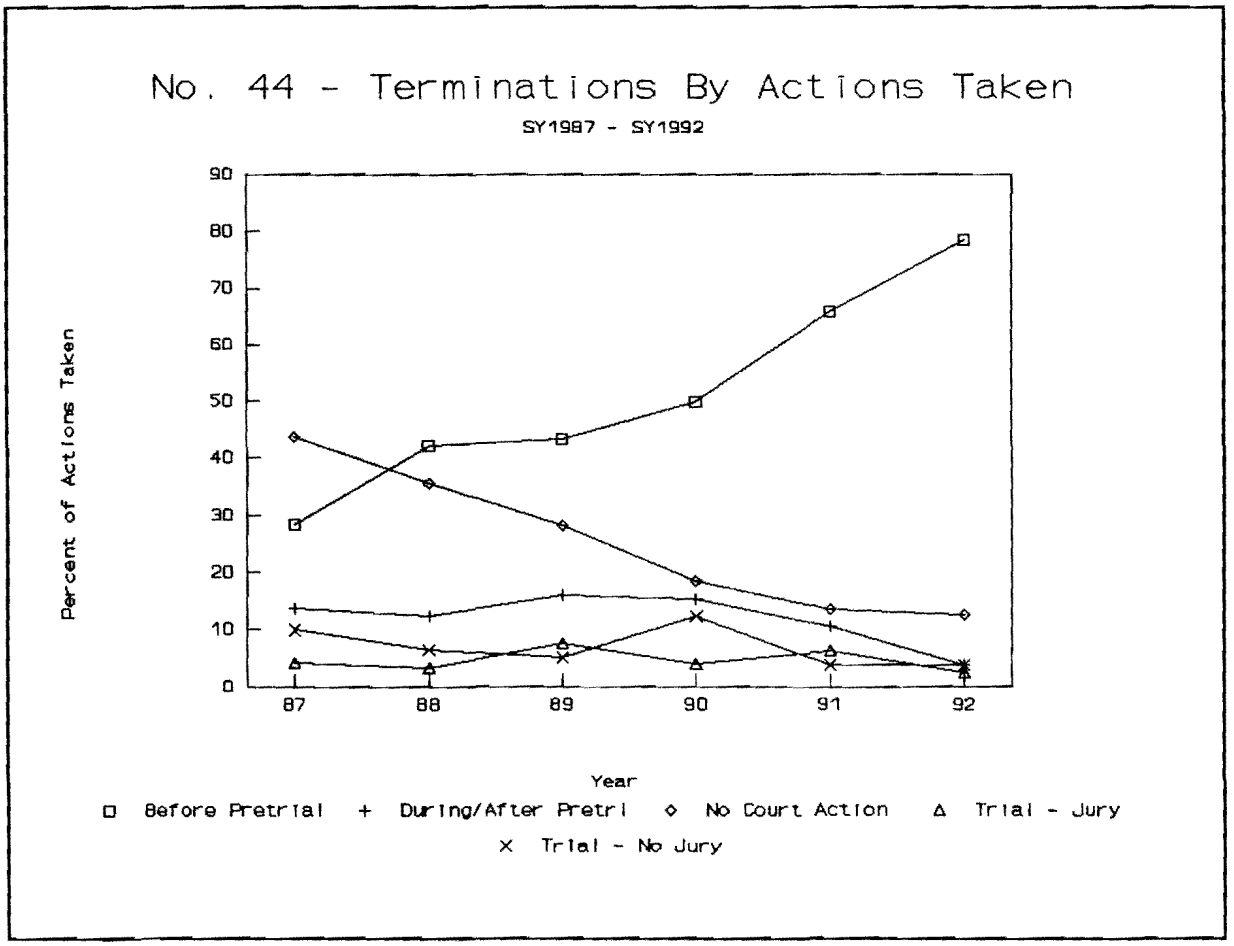

No. 41 - Magistrate Workload
Criminal Matters
Numbers of Cases (Thousands)
1.1
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
Hearings
Orders
Pre Tri Conf
Voir Dire
Petty Off
Types of Cases


No. 42 - Magistrate Workload
Prisoner Matters
Numbers of Cases (Thousands)
1.2
1.1
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
Orders
Rpts&Recomm
Evidence
Types of Cases


No. 43 - Holman Prison
Sec. 1983 Civil Actions
Number of Filings
90
80
70
60
50
40
30
20
83
84
85
86
87
88
89
90
91
92
Year

VII. TERMINATIONS OF CIVIL ACTIONS

Data compiled by the Office of the Clerk and analyzed for this report reveal a significant, exponential increase in terminations of actions before pretrial hearings during the period SY 1987-SY 1992. This information more precisely differentiates civil case dispositions by type of actions resulting in termination. In SY 1987, 28.3% of actions filed were terminated before pretrial hearings. Terminations of this type include voluntary and involuntary dismissals, summary judgments, and other court approved actions. In SY 1987, the most frequently recorded category of termination was "No court action." Terminations of this type, totaling 43.8% of civil filings in SY 1987, include cases in which there was essentially no significant time and effort expended in discovery and other litigation activities. Dismissals for lack of prosection and voluntary withdrawals are examples of this type of termination. In SY 1992, however, the percentage of terminations before pretrial had grown dramatically to 78.5% of civil cases, while the percentage of terminations by "no court action" had declined to 12.6%. (See Graph 44, page 137.)


No. 44 - Terminations By Actions Taken
SY1987 - SY1992
Percent of Actions Taken
90
80
70
60
50
40
30
20
10
0
87
88
89
90
91
92
Year
Before Pretrial
During/After Pretrl
No Court Action
Trial - Jury
Trial - No Jury

VIII. OBSERVATIONS OF ATTORNEYS SERVING ON THE ADVISORY GROUP

The five attorneys who are members of the Advisory Group were asked to comment on litigation management in the federal district court. A request for preliminary information was mailed to each of the attorneys in late July, 1992. Followup interviews were conducted over the next several weeks. The responses from those who completed and returned the questionnaire are reported in the format of the initial survey instrument. In some instances, the comments reported are those of colleagues or associates who were asked by Advisory Group member attorneys to respond on their behalf.

Questions 5, 6, 9, 10, 11, 12, and 19 particularly solicited perceptions regarding litigation management procedures and suggestions for improved efficiency. Questions 16 and 17 sought comments regarding alternative dispute resolution and question 18 asked for respondents' impression of the impact of pro se litigation.

Survey Responses

1. How many years have you practiced in the U.S. District Court for the Southern District of Alabama?

- Approximately 15 years
- 20 years
- 17 years

2. In approximately how many civil cases per year are you involved as:

- plaintiff's council: 3-4
  50
- defendant's council: 4-5

- My office is involved in approximately 100 such cases per

year

3. In what types of civil cases are you usually involved?

- My office represents the United States and its agencies and employees in affirmative action and defense litigation in Federal District Court. Major areas of litigation include affirmative suits to collect on notes and debts owed to the United States, employment discrimination litigation, tort claims against the U.S. and its employees, and judicial review of agency action. Social security appeals have not been included in these responses.

- Plaintiff's personal injury lawsuits

- ERISA; § 1981 and § 1983 civil rights actions; some personal injury

4. Based upon your experience and observations, what aspect(s) of civil litigation is/are:

(a) most costly?

- expert witnesses, depositions

- The discovery process

- discovery/depositions; number & travel

- use of experts

(b) most time consuming?

- Motions and briefs

- Local procedure which requires briefs with virtually any motion; proposed findings of fact and conclusions of law with summary judgment motions; joint pretrial orders prepared by all parties.

- discovery in general

- Discovery.

5. What do you perceive to be the principal causes of any unusual cost and/or time consumption you may have experienced or observed in civil litigation?

- The joint pretrial order to be prepared by all parties consumes a colossal amount of time, most of it wasted.

- Defending pro se prisoner complaints. Also many meritorious lawsuits contain many frivolous claims instead of

focusing on the main issue.

- Time consumption is dramatically increased in Federal Court over that of State Court due to overmanagement by judges.

6. What suggestions could you make to reduce the cost and time spent on various aspects of civil litigation?

- Costs probably cannot be reduced, but time spent as a result of over-management of every detail of pre-trial procedure by Federal Judges could be drastically reduced.

- None, generally; costs are usually related to things other than court management; maybe the cost of experts could be reduced.

- a. Contact opposing party to explore settlement possibilities before filing suit.
  b. Court assist more in narrowing the issues at an early stage.
  c. Require losing party to pay attorney fees for prevailing party under certain circumstances.

7. Do you consider the use of expert witnesses a significant cost in civil litigation? If so, what is the average dollar amount expended for expert witnesses?

- No.

- Yes.

- In appropriate cases, yes; not so much in preparation as in the trial itself; $100-$200 per hour, varying with type of case.

- Yes. $3,000 - $5,000.

8. What particular aspects of discovery are most costly and time-consuming?

- Depositions.

- Depositions.

- Expert depositions and consultation.

- Depositions are most costly.
  Interrogatories and requests for production are the most time-consuming.

9. What suggestions could you make to reduce the cost and time spent on discovery?

- That the court require full disclosure by all parties at an early stage.

- Cost and time spent on discover is not a major problem in my view, except to the extent that unreasonable limitations and deadlines are established due to over-management by the court, which result in a great deal of discovery having to be accomplished in a short period of time.

- None. The discovery process is adequate.

10. In your experience, what court management techniques have been particularly effective in reducing the cost and time of civil litigation?

- Limiting the number of interrogatories and requests for production which can be served.

- Less micro-management, rather than more would be most effective.

- The involvement of the court at an early stage to focus on the real issues.

- Rule 16 scheduling conferences; the federal court management system; helpfulness, professionalism, skill and knowledgeability of the Clerk's Office.

11. What management techniques, if any, have not been effective?

- The uncertainty of trial scheduling in civil cases.

- The failure of the court to promptly dispose of dispositive motions, and requiring the parties to proceed with discovery while such motion is pending.

- Gross overmanagement and micro-management of every detail of pre-trial preparation with numerous unreasonable deadlines totally unrelated to the ultimate time of trial.

- The proposed joint pretrial order.

12. What suggestions do you have for improving these management techniques?

- Eliminate 90% of them.

- Briefs required only with summary judgment motions; eliminate requirement of proposed factual/legal findings when a summary judgment motion is filed; simplify the pretrial order and do <u>not</u> require a joint pretrial order.

- Prompt rulings on pre-trial motions.
Hold discovery in abeyance while these motions are pending.

13. Please estimate the percentage of time spent on the following phases of litigation in cases that are settled before trial:

a) Pleading

- 35%

- 10%

- 15-20%

b) Discovery

- 30%

- 50%

- 50%

c) Conferences

- 5%

- 5%

d) Research

- 20%

- 30%

- 5%

e) Hearings

- 5%

- 5%

f) Other

- 5%

- 25% - the other includes duplicative pre-trial preparation required in order to prepare for hearings with judges, such as pre-trial conferences, etc. Over-management in Federal Court requires substantially greater amounts of time for trial preparation long before a trial ever occurs and long before a

settlement is reasonably expected.

15. In jury trial cases, how much time is typically spent on jury selection?

- Nominal time.

- 1/2 a day.

- An appropriate amount of time; neither excessive nor inadequate.

- Inconsequential amount of time, but state court selection system is preferable.

16. Please describe the frequency and effectiveness of any forms of alternative dispute resolution in which you have been involved with respect to matters pending in the federal district court?

- ERISA arbitration.

- None.

- None.

17. In your opinion, how would alternative dispute resolution affect litigation management in the federal district court?

- It would depend upon the finality and opportunity for review; opposed unless there is opportunity for review.

- This deserves serious study and consideration.

- It would make it worse if would create another level of bureaucracy and another series of hoops to jump through before you got to trial.

18. What is your perception of the impact of pro se litigation on caseload management?

- These cases take an inordinate amount of time and prove to have little or nor merit.

- I have no idea.

- Pro se litigation is extremely vexatious and frustrating, and consumes an inordinate amount of judicial resources because the pro se plaintiff does not know what he or she is doing. This is particularly true in litigation filed by prisoners.

- It must be enormous based upon personal experience.

19. Please make any additional comments, suggestions, or observations you believe would be helpful in assessing and enhancing the effectiveness of caseload management in the federal district court.

- The system presents no problems; another active judge would help.

- Restrict and reduce availability of informa pauperis status.

- Early involvement by court in narrowing issues.

- Prompt disposition by court of dispositive motions.

- More uniform pretrial procedure requirements, which may differ from judge to judge.

- New order on jury selection.

- Please see the attached transcript of an address delivered by the Chief Judge for the United States District Court for the Northern District of Alabama at the Annual Convention of the International Society of Barristers on March 15, 1991.

General Perceptions

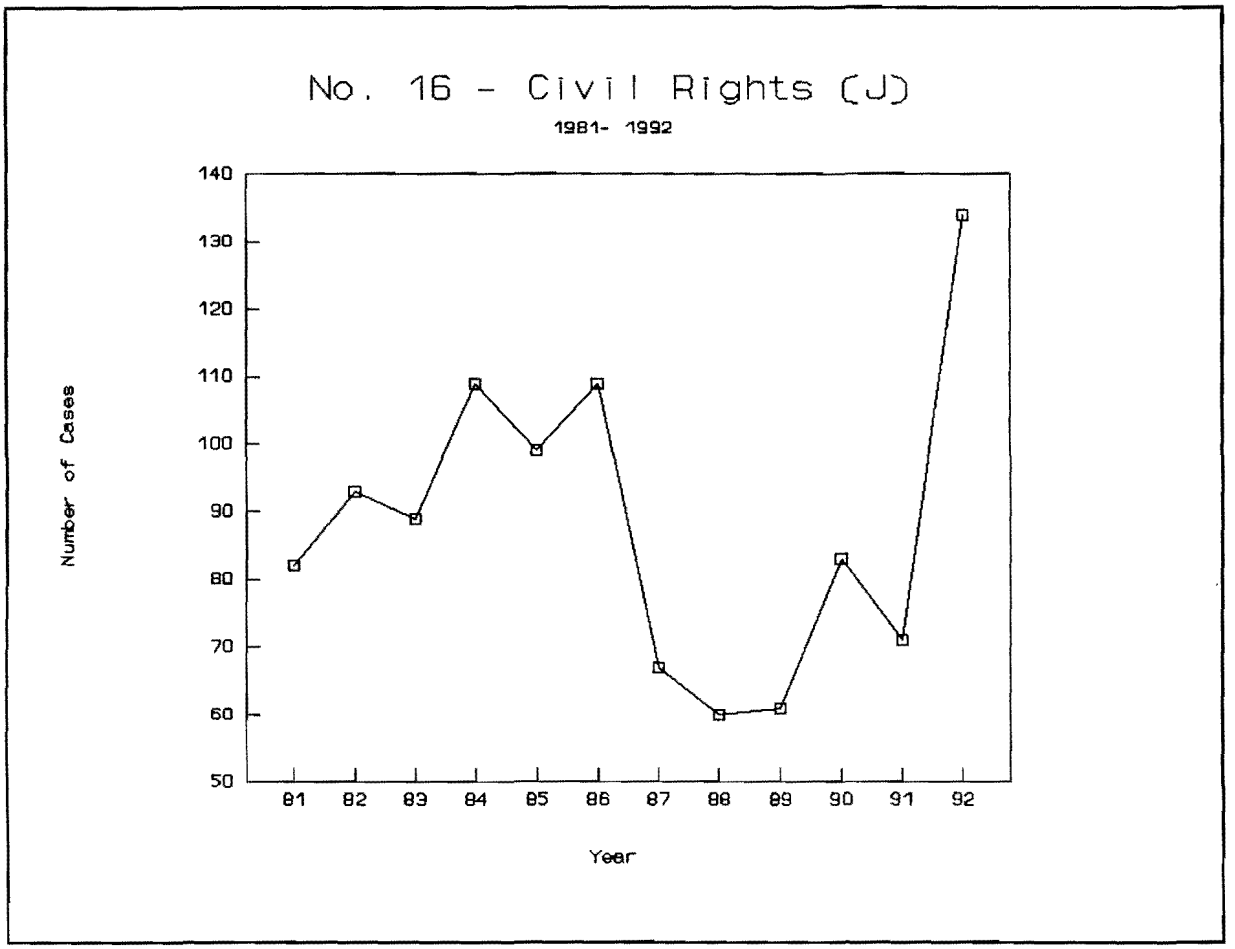
During interviews with the respondents, each was asked to discuss generally his perceptions of litigating in the federal district court. In addition, interviewees were asked to respond to two specific questions that were raised during the Advisory Group's meeting in May, 1992:

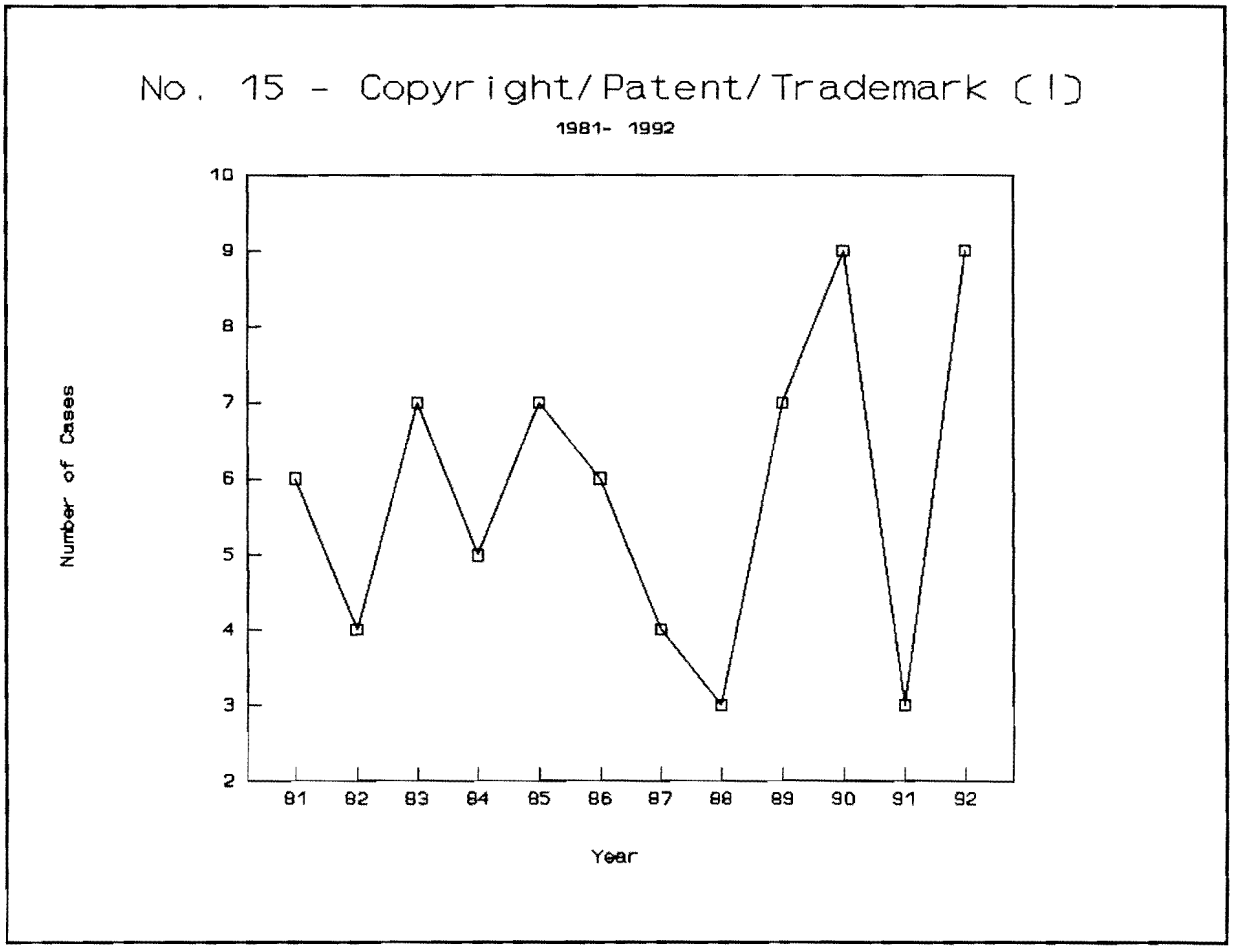
Do you think federal civil filings have decreased because attorneys feel their cases would not progress satisfactorily due to the increased volume of federal criminal filings and choose, instead, to file concurrent jurisdiction cases in state court?

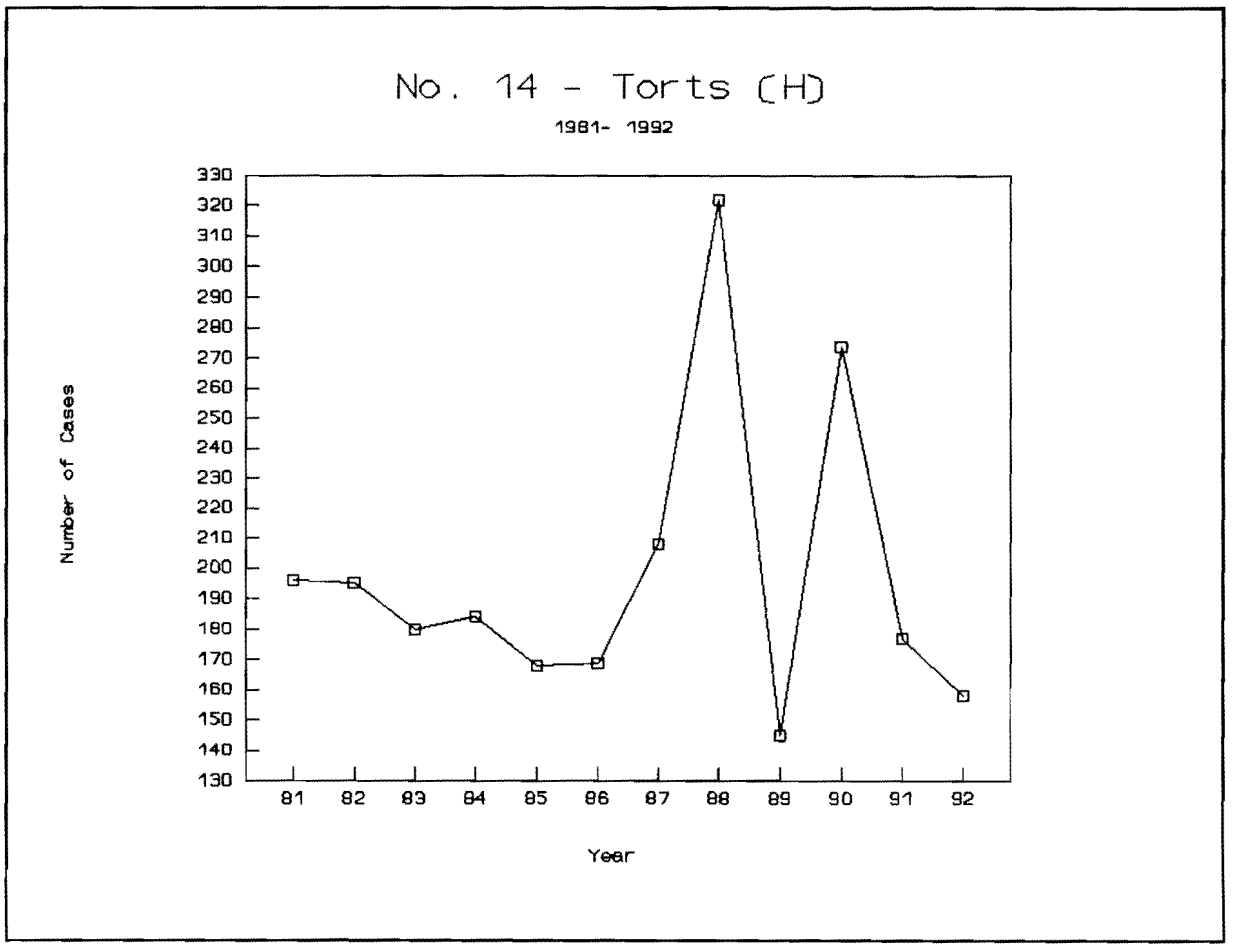
- Lawyers do not consider the federal criminal case filings; I file where I will get the best result for my client with the least amount of hassle.

Are some lawyers intimidated by the more formal structure of federal court?

- There is an intimidation factor, especially of new, young


No. 16 - Civil Rights (J)
1981- 1992
Number of Cases
140
130
120
110
100
90
80
70
60
50
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 15 - Copyright/Patent/Trademark (1)
1981- 1992
Number of Cases
10
9
8
7
6
5
4
3
2
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 14 - Torts (H)
1981- 1992
Number of Cases
330
320
310
300
290
280
270
260
250
240
230
220
210
200
190
180
170
160
150
140
130
81
82
83
84
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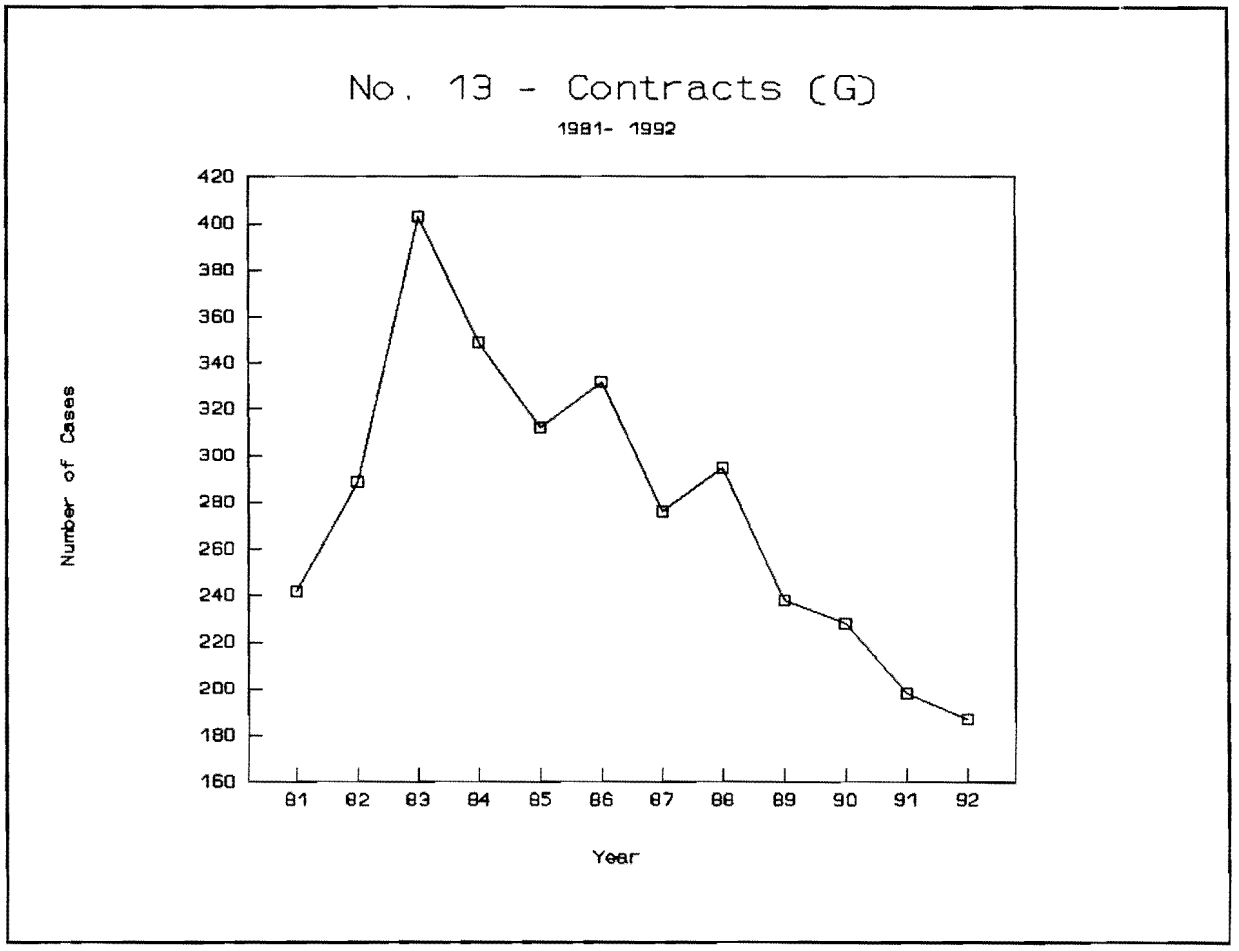
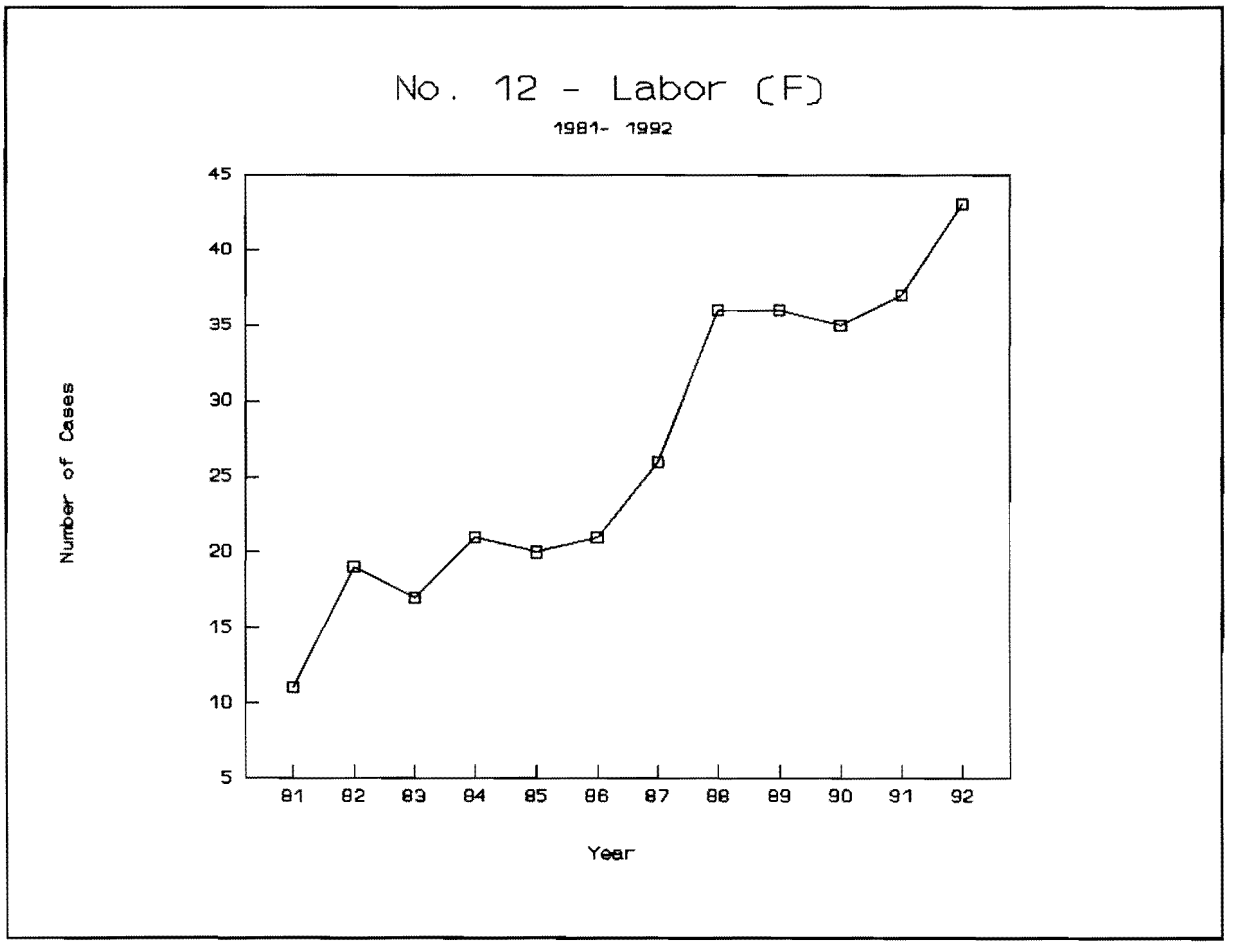
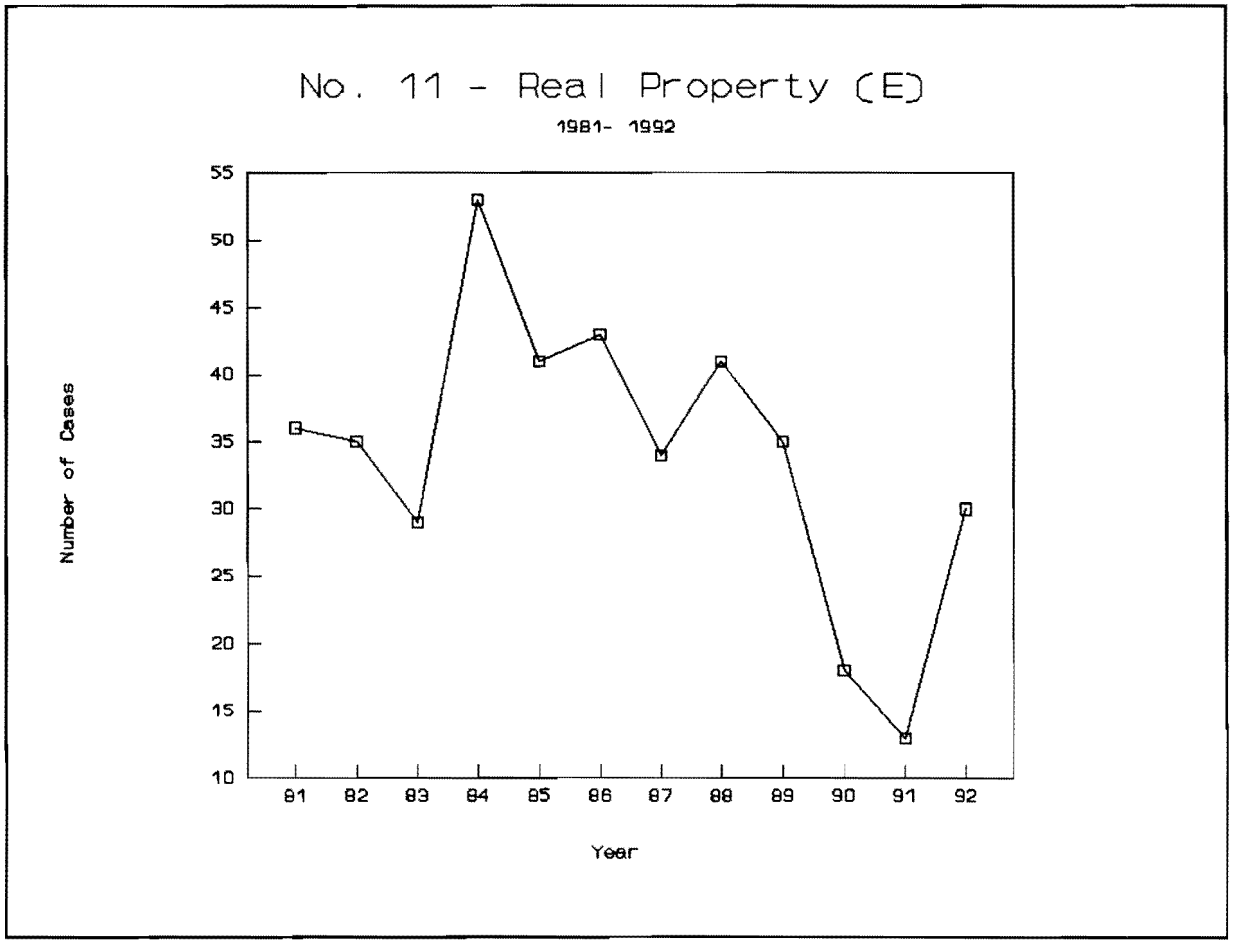
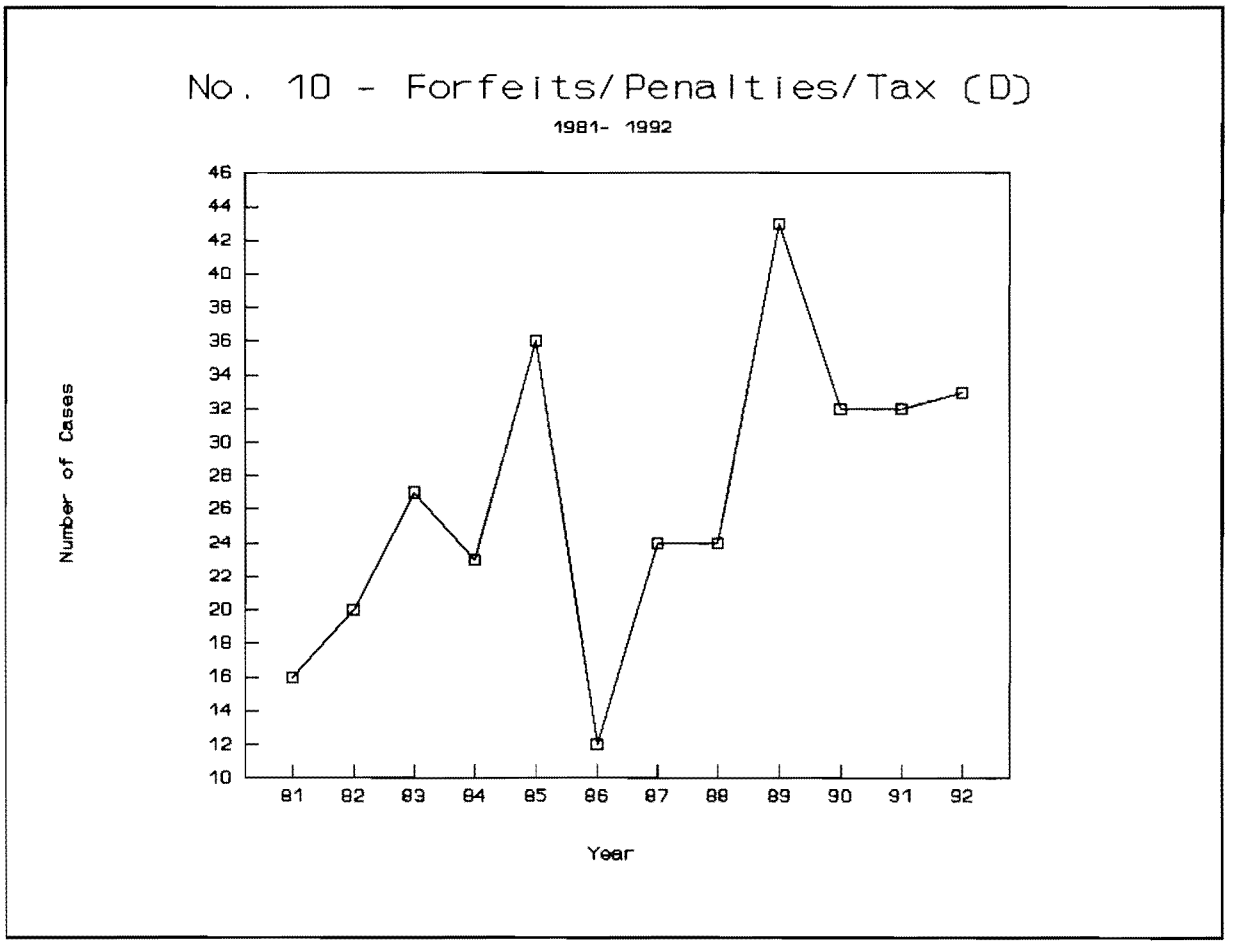
90
91
92
Year


No. 13 - Contracts (G)
1981- 1992
Number of Cases
420
400
380
360
340
320
300
280
260
240
220
200
180
160
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 12 - Labor (F)
1981- 1992
Number of Cases
45
40
35
30
25
20
15
10
5
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 11 - Real Property (E)
1981- 1992
Number of Cases
55
50
45
40
35
30
25
20
15
10
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 10 - Forfeits/Penalties/Tax (D)
1981- 1992
Number of Cases
46
44
42
40
38
36
34
32
30
28
26
24
22
20
18
16
14
12
10
81
82
83
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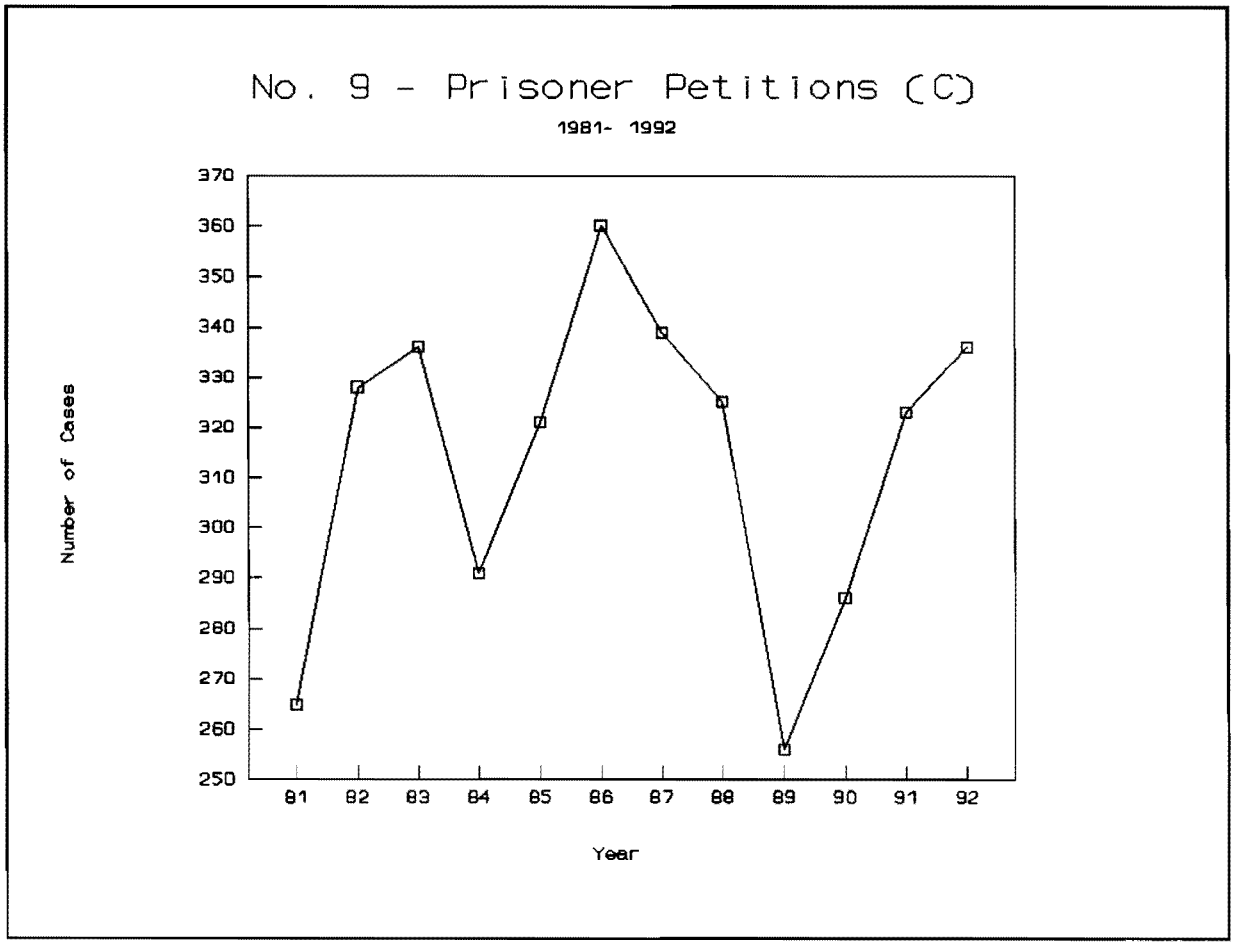
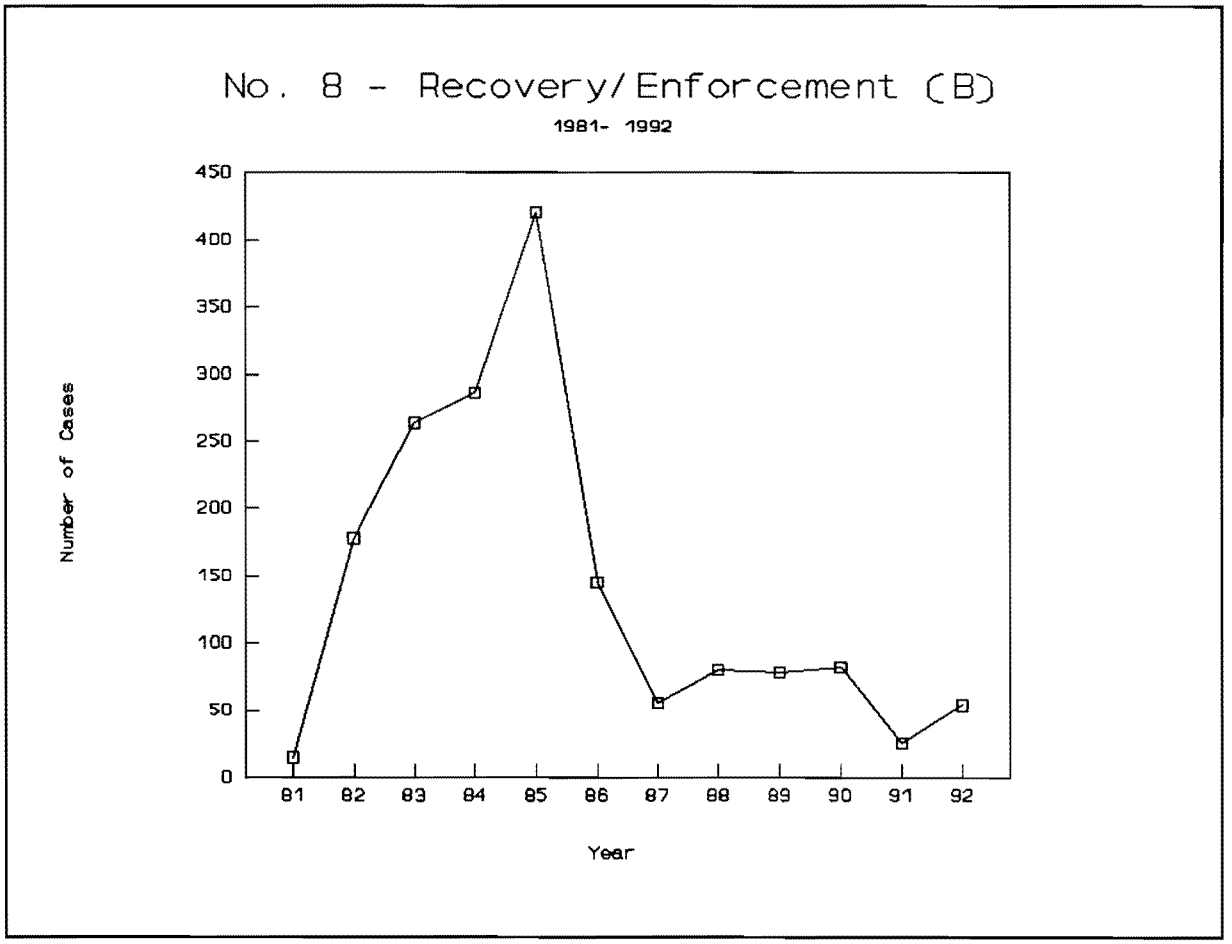
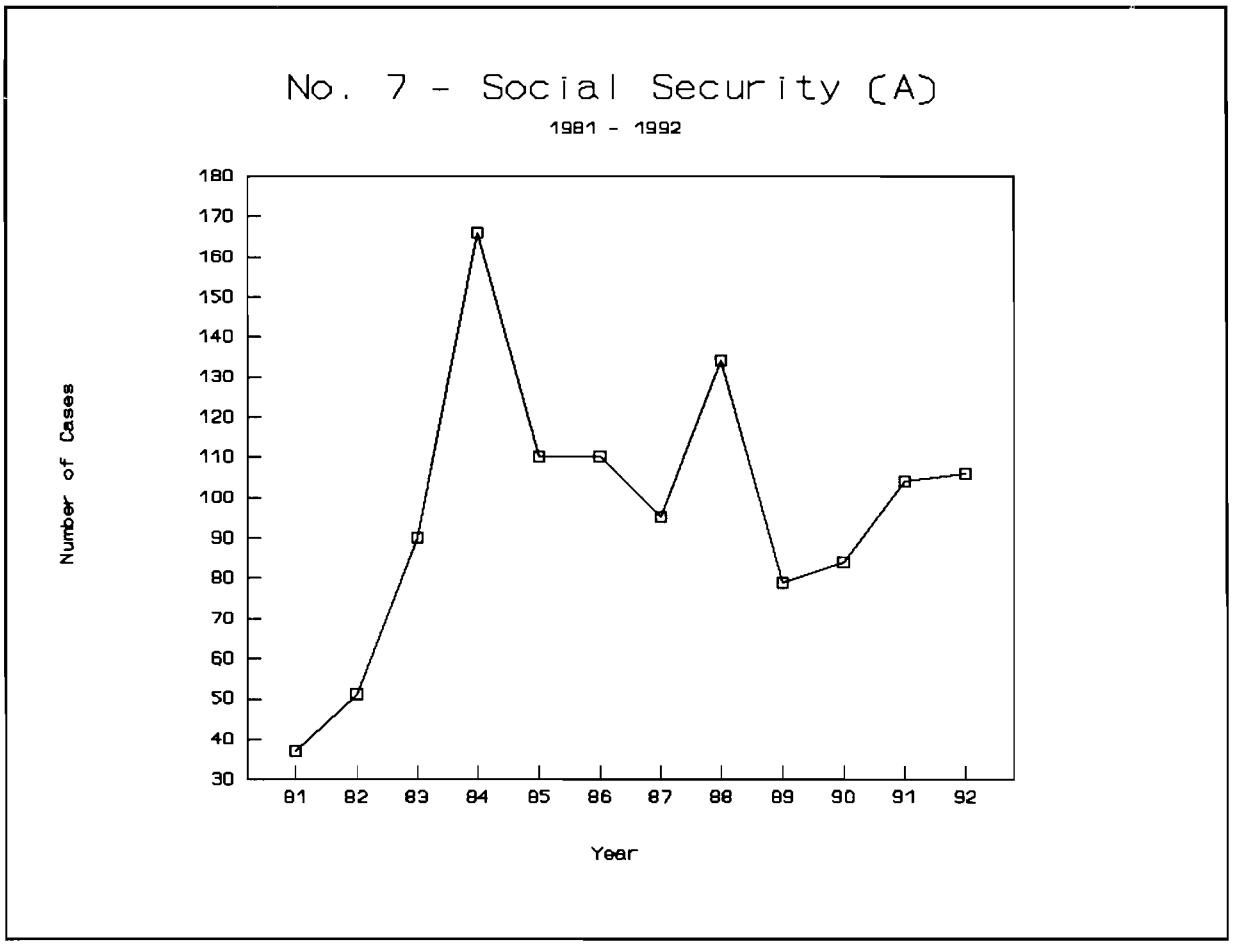
Year


No. 9 - Prisoner Petitions (C)
1981- 1992
Number of Cases
370
360
350
340
330
320
310
300
290
280
270
260
250
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 8 - Recovery/Enforcement (B)
1981- 1992
Number of Cases
450
400
350
300
250
200
150
100
50
0
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 7 - Social Security (A)
1981 - 1992
Number of Cases
180
170
160
150
140
130
120
110
100
90
80
70
60
50
40
30
81
82
83
84
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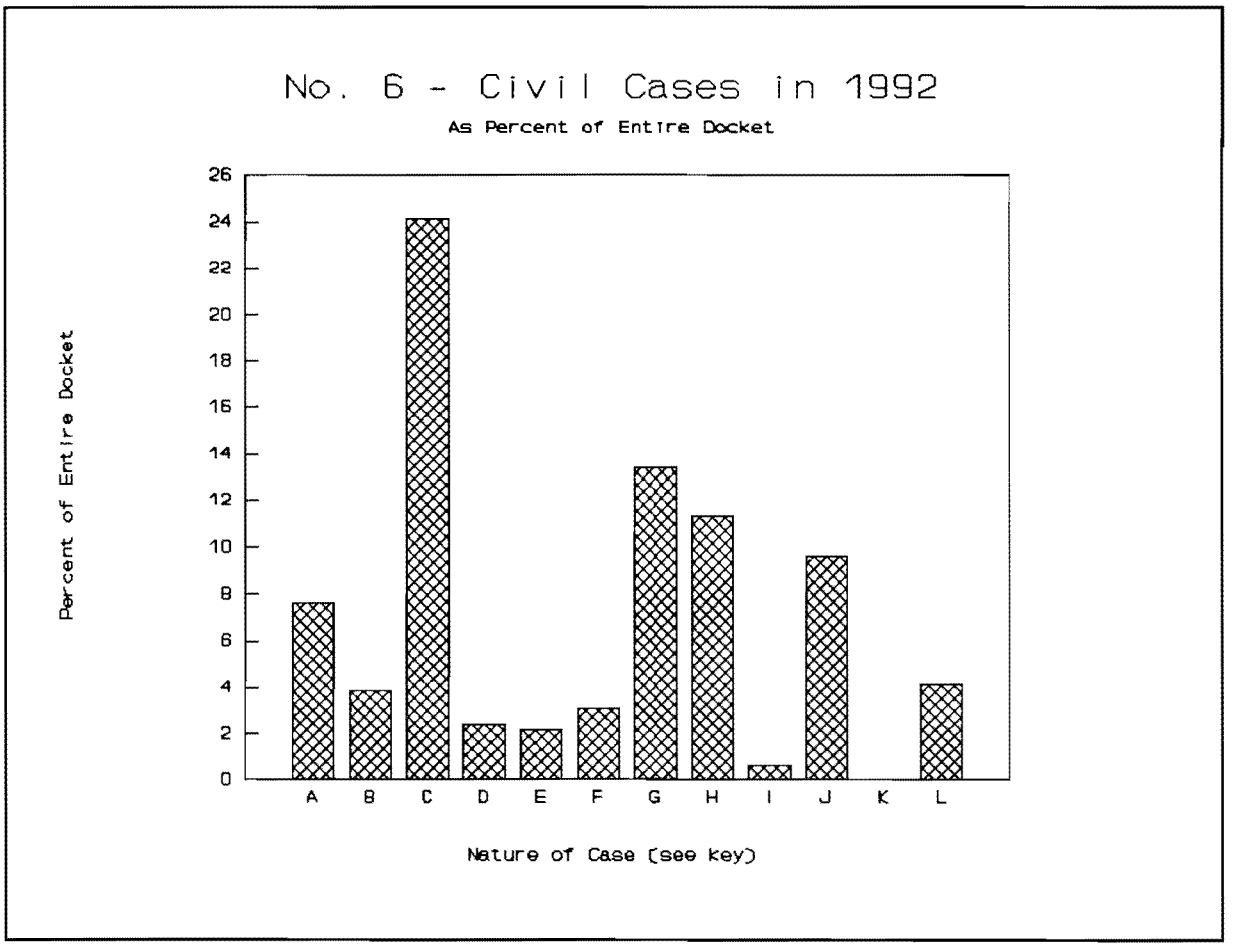
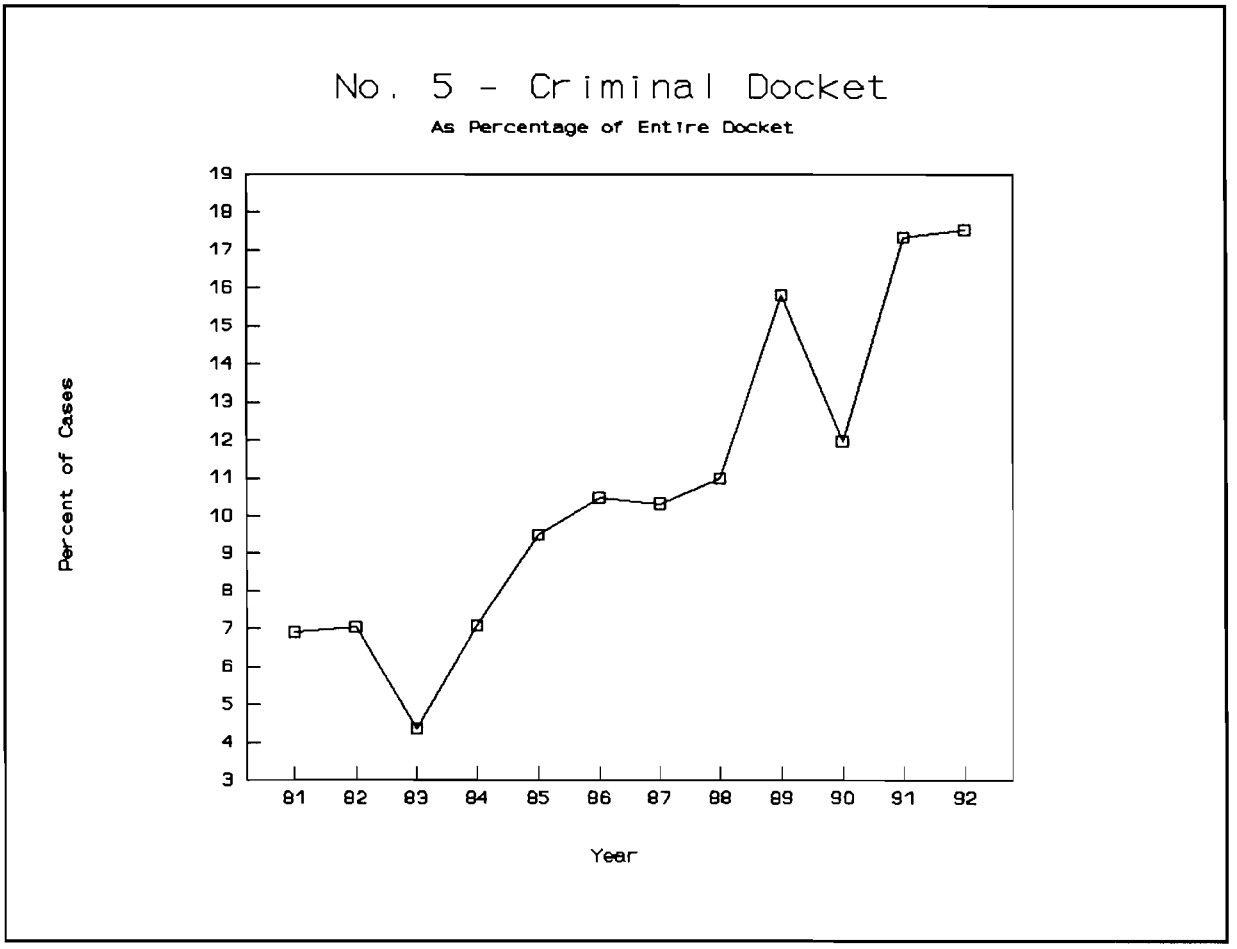
90
91
92
Year



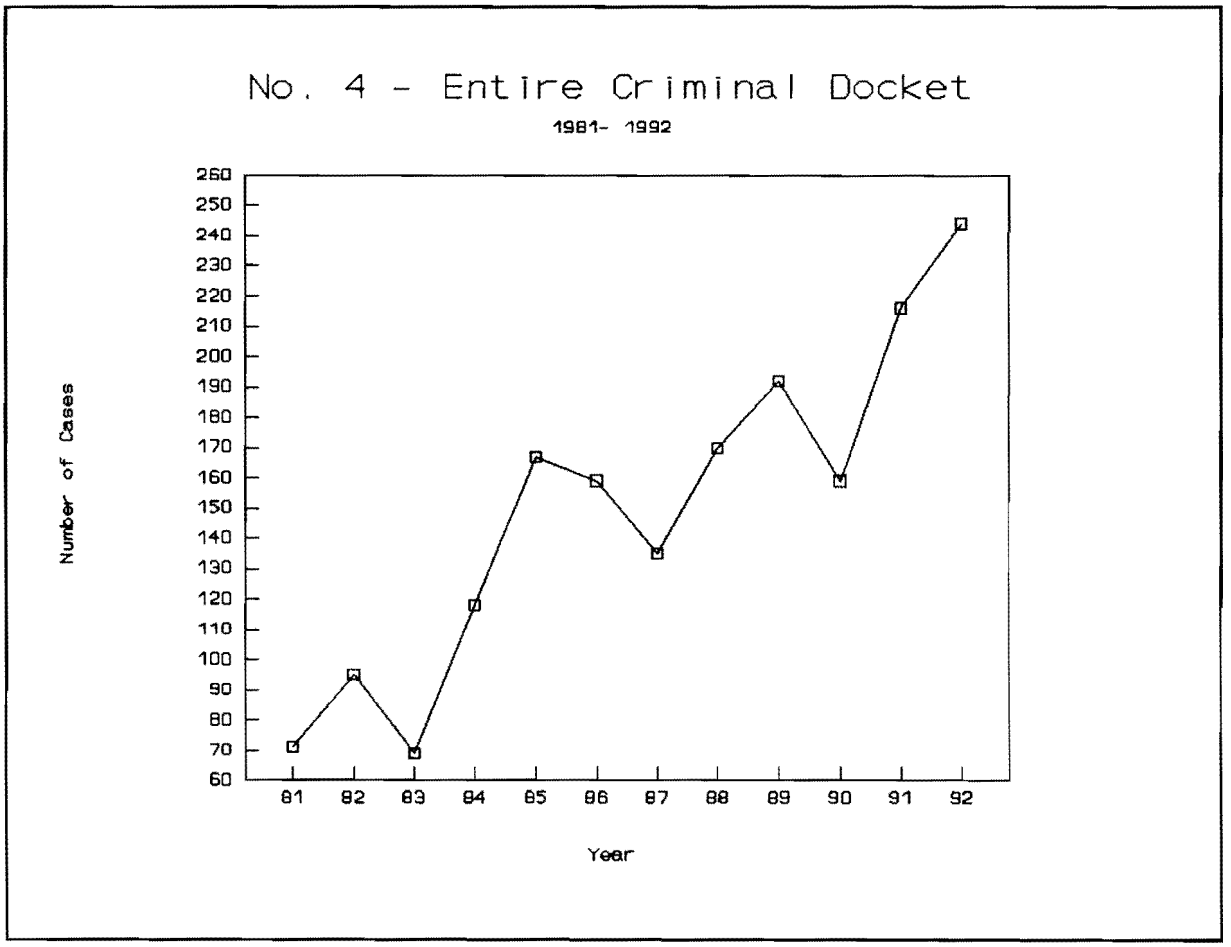
THIS GRAPH WAS DEVELOPED FROM THE 1992 YEAR DATA IN TABLE 3 (Page 99).

KEY TO NATURE OF CIVIL SUIT

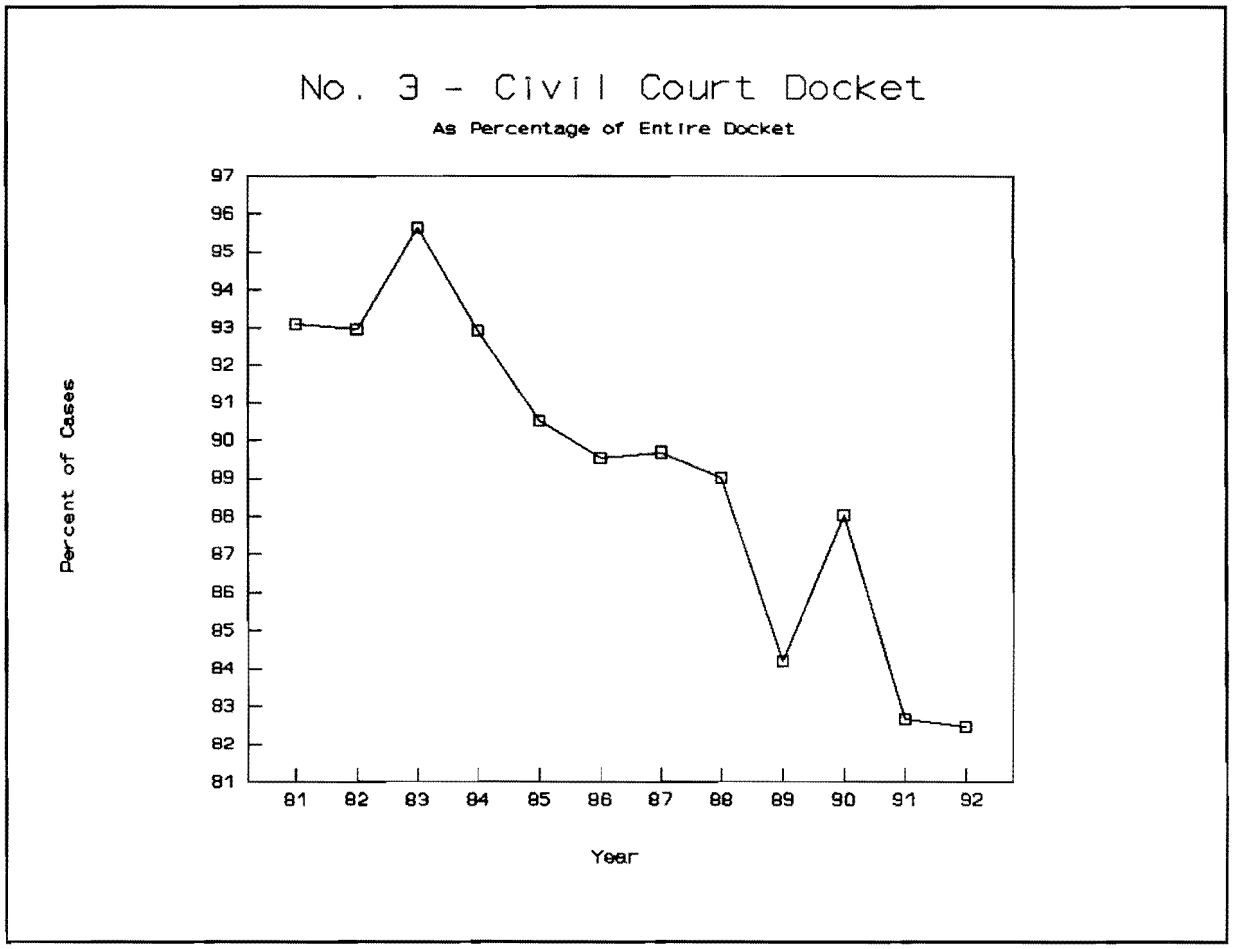
A. SOCIAL SECURITY
B. RECOVERY/ENFORCEMENT
C. PRISONER PETITIONS
D. FORFEITURES/PENALTIES/TAX
E. REAL PROPERTY
F. LABOR
G. CONTRACTS
H. TORTS
I. COPYRIGHT/PATENT/TRADEMARK
J. CIVIL RIGHTS
K. ANTITRUST
L. ALL OTHER CIVIL



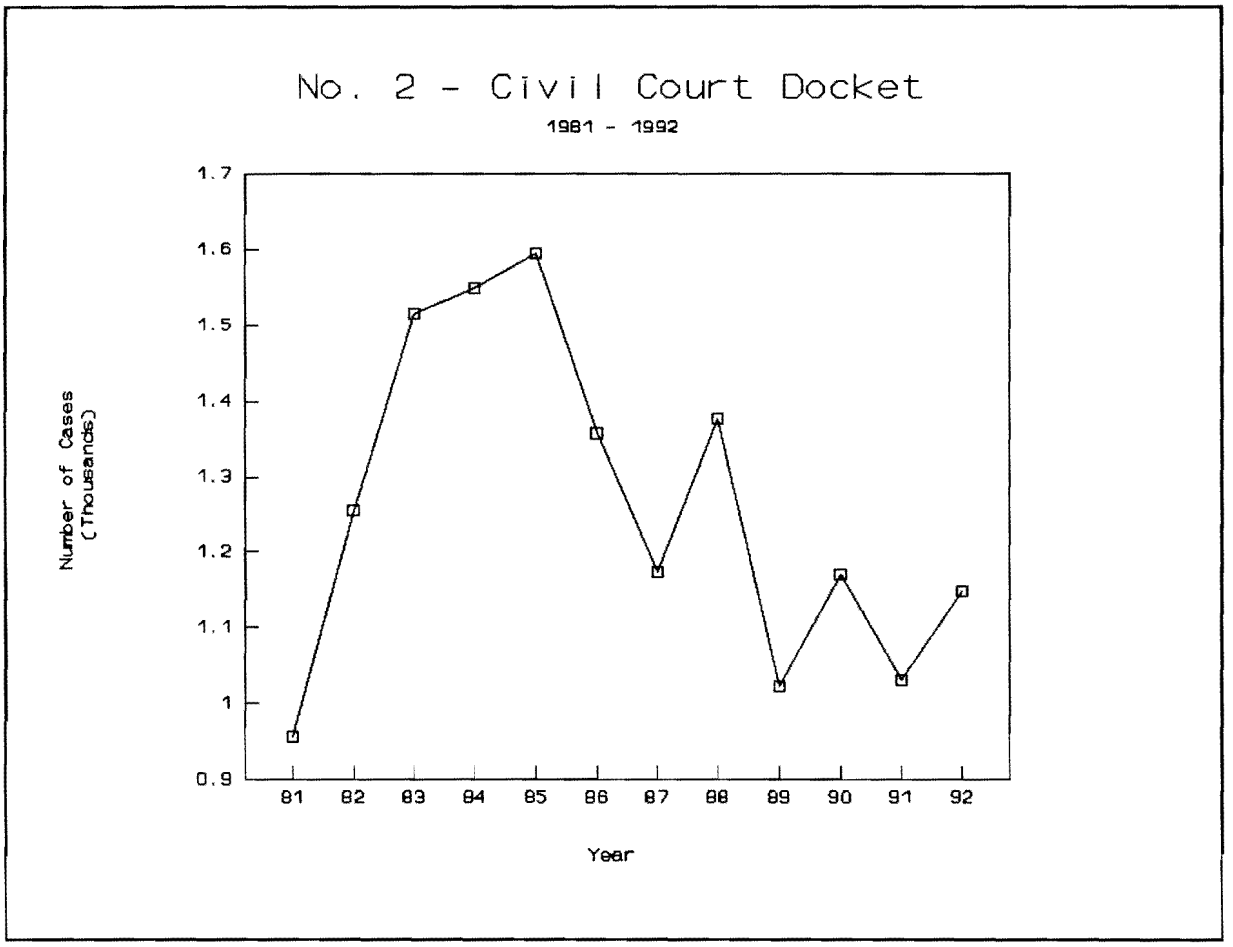
THIS GRAPH WAS DEVELOPED FROM THE DATA IN TABLE 5 (Page 99). IT REPRESENTS THE TOTAL NUMBER OF CRIMINAL CASES BY YEAR FROM 1981 TO 1992 AS A PERCENTAGE OF THE ENTIRE DOCKET.



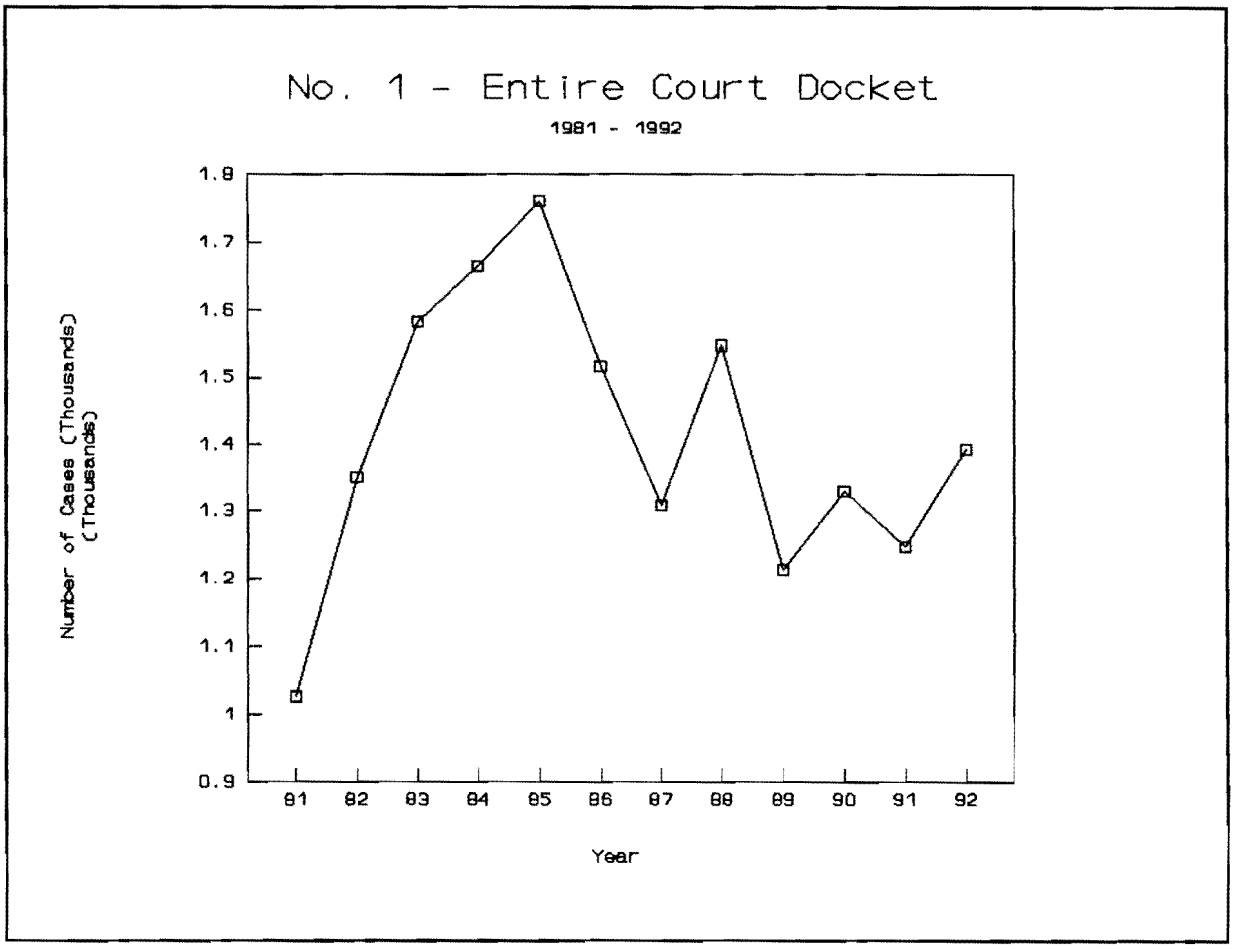
THIS GRAPH WAS DEVELOPED FROM THE DATA IN TABLE 4 (Page 99). IT REPRESENTS THE TOTAL NUMBER OF CRIMINAL CASES BY YEAR FROM 1981 TO 1992.



THIS GRAPH WAS DEVELOPED FROM THE DATA IN TABLE 3 (Page 99). IT REPRESENTS THE TOTAL NUMBER OF CIVIL CASES BY YEAR FROM 1981 TO 1992 AS A PERCENTAGE OF THE ENTIRE DOCKET.



THIS GRAPH WAS DEVELOPED FROM THE DATA IN TABLE 2 (Page 98). IT REPRESENTS THE TOTAL NUMBER OF CIVIL CASES BY YEAR FROM 1981 TO 1992.



THIS GRAPH WAS DEVELOPED FROM THE DATA IN TABLE 1 (Page 98). IT REPRESENTS THE TOTAL NUMBER OF CASES BY YEAR FROM 1981 TO 1992.

Appendix F

Graphs to Accompany

An Analysis of the

Caseload of the

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF ALABAMA

significant impact on the docket.

Graphs 34A through 36, Graph 39, and Tables 6 through 15 were developed from the SARD system data provided by the Clerk of the Circuit Court. There are 58 months of data. The first 42 months correspond to the use of the previous document management calendar, and the last 16 periods correspond to the use of the present document management calendar. Linear regression analysis was performed on the civil docket and criminal docket separately, as well as the entire docket. In each instance, a linear regression model was developed using data for the previous calendar and for the current calendar. The Regression option in Lotus 1-2-3, version 2.3 was used to construct all models. The T-Val was calculated manually by dividing the X Coefficient value by the Std Err of Coef. value. The P-Val was determined from the Student's t distribution published in *Biometrika Tables for Statisticians*, vol. I, 3d ed., 1966.

Graphs 37 and 38 were developed from United States District Courts Report of Criminal Docket for all Misdemeanor and Felony Proceedings, Southern District of Alabama.

Graphs 40 through 42 and 44 were developed from data provided by the court. Graph 43 was developed from data provided by Holman Prison Warden C.E. Jones.

IX. METHODOLOGY OF THE STUDY

Lotus 1-2-3, version 2.3, was used to create all tables and graphs presented in this report.

Tables 1 through 5 were developed from data from the U.S. District Court - Judicial Workload Profiles for SY1981 through SY1992. Graphs 1 through 33 are all based on this data.

The analysis of the Judicial Workload Profile data was focused on detecting patterns, both for the entire docket and for cases of specific nature. The intent was to graphically depict a true representation of the docket in its current state and in terms of the changes that have occurred over the past eleven statistical years. Linear regression analysis was used to calculate the rates of growth or decline. Attention was focused on those cases that exhibited either growth or decreasing trends as well as comprised a significant proportion of the entire docket. By focusing on cases of this nature there was an attempt to identify specific areas where future managerial attention will be required.

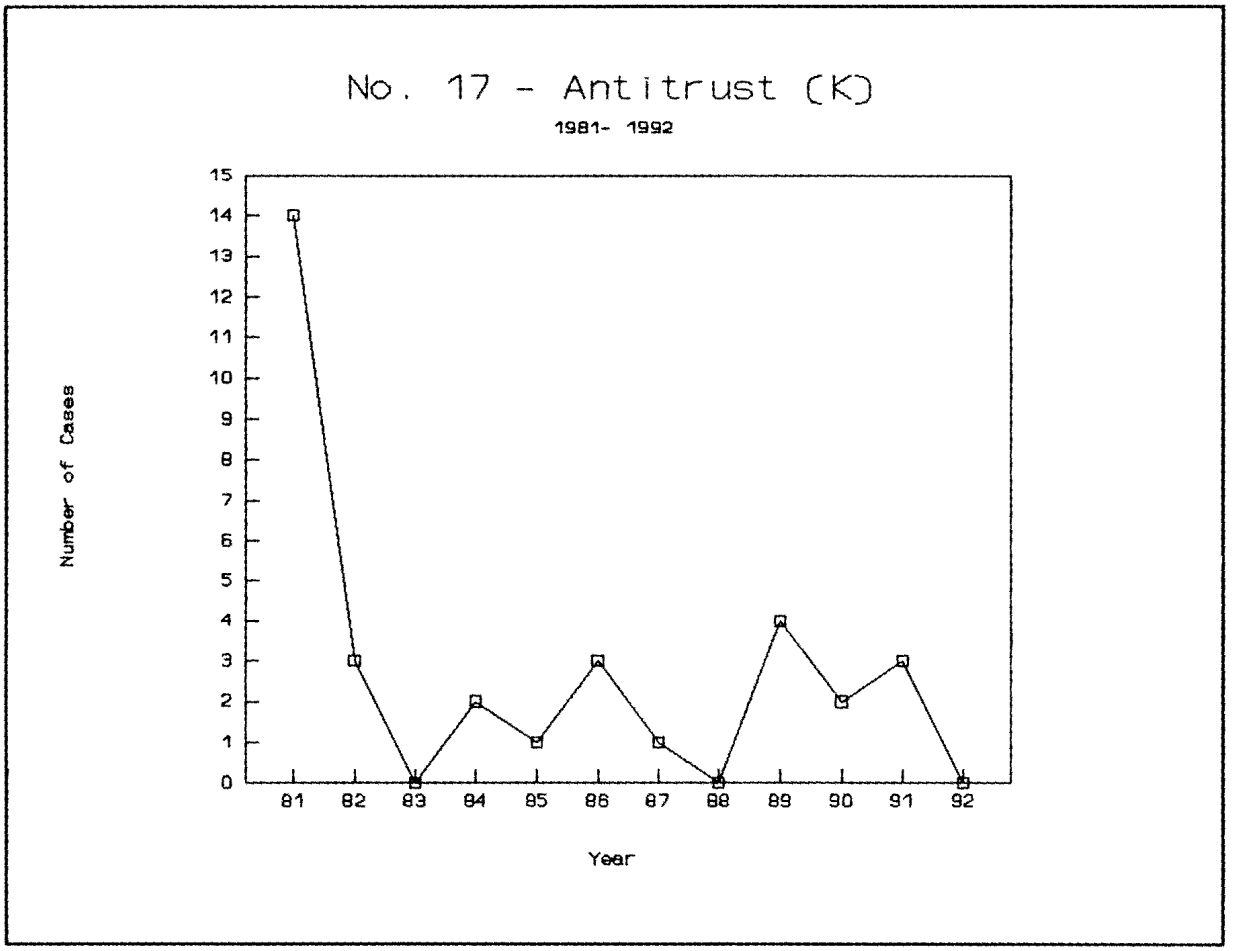
The analysis is based solely on trends. No interpretations have been made (or can be made) with regard to types of cases, complexity, resource requirements, or time requirements. Court officials must determine the specific impact of the cases on the docket. This analysis can only bring certain types of cases to the attention of the court administration. Their experience and understanding of the dynamics of court docket management must provide the final analysis to determine what constitutes significant changes in the court docket and what factors have

lawyers by the big law firms.

- The amount of work and expense involved in federal court probably discourages some lawyers.

- Yes. They must adhere to deadlines, and there is not as much flexibility in federal court. The formal requirements for briefs, etc., are time-consuming and costly, but they help in preparation of the case and are economical in the long run if you win for your client as a result.

The interviewees frequently complimented the Office of the Clerk for its professionalism and helpfulness.


No. 17 - Antitrust (K)
1981- 1992
Number of Cases
0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
81
82
83
84
85
86
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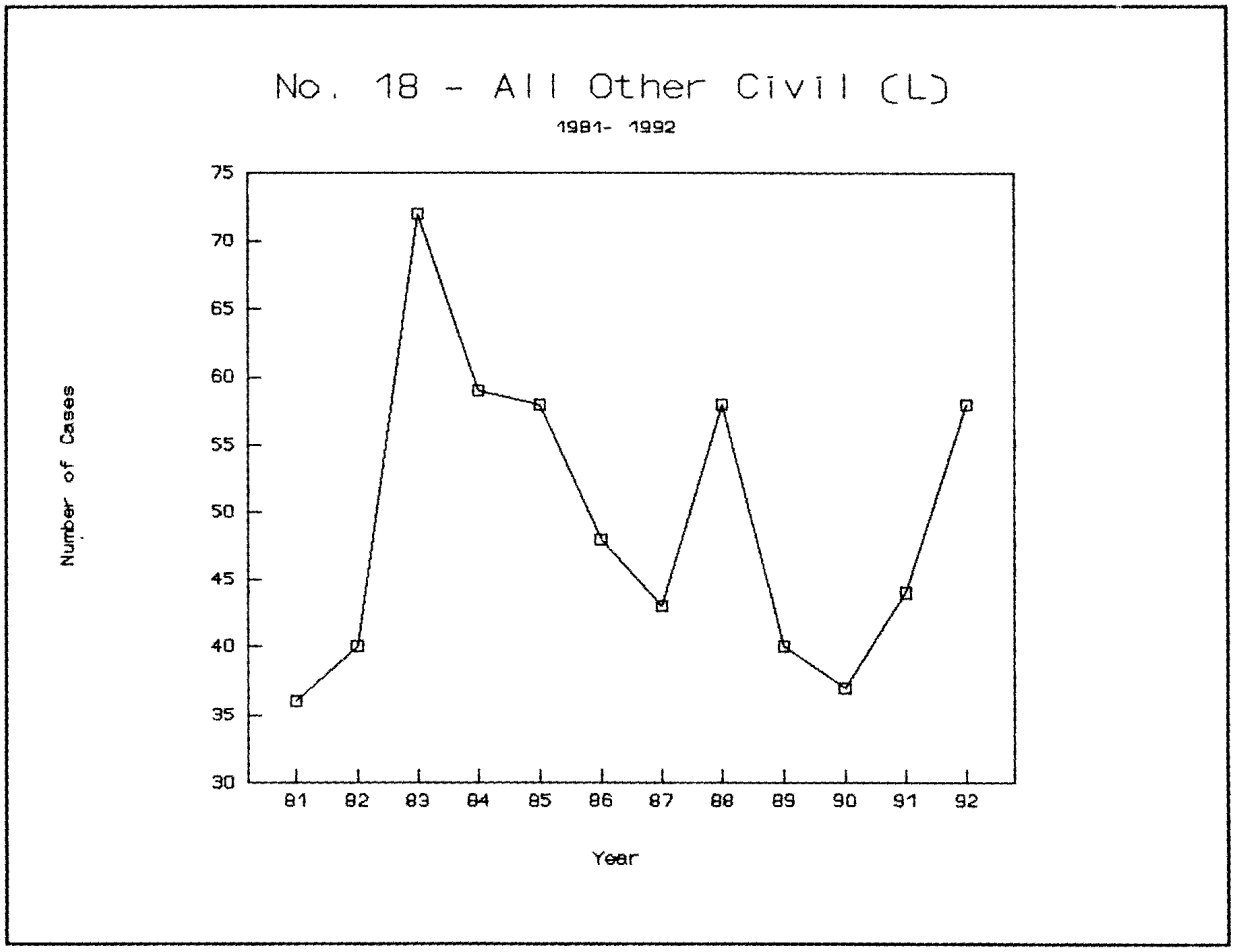
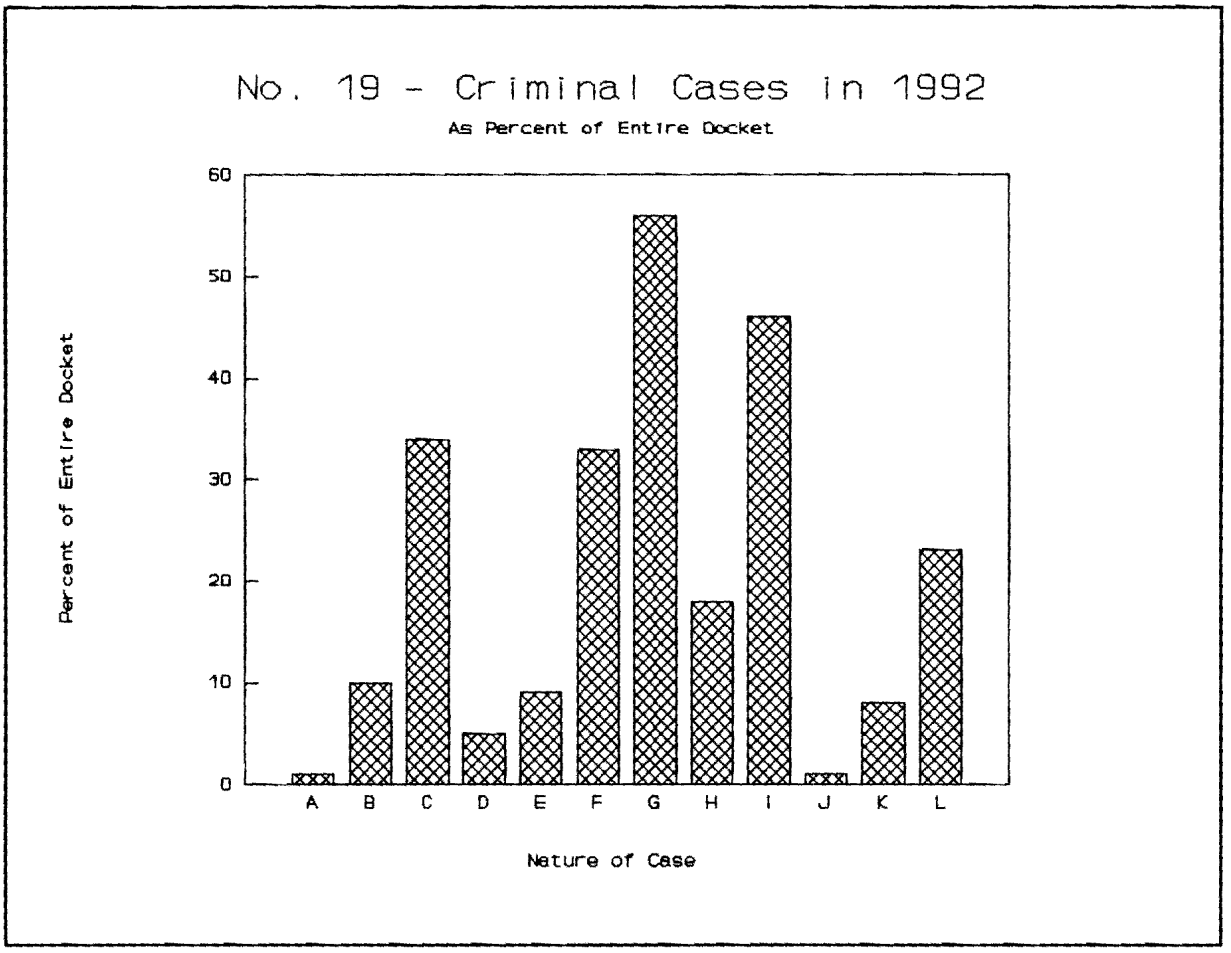
88
89
90
91
92
Year

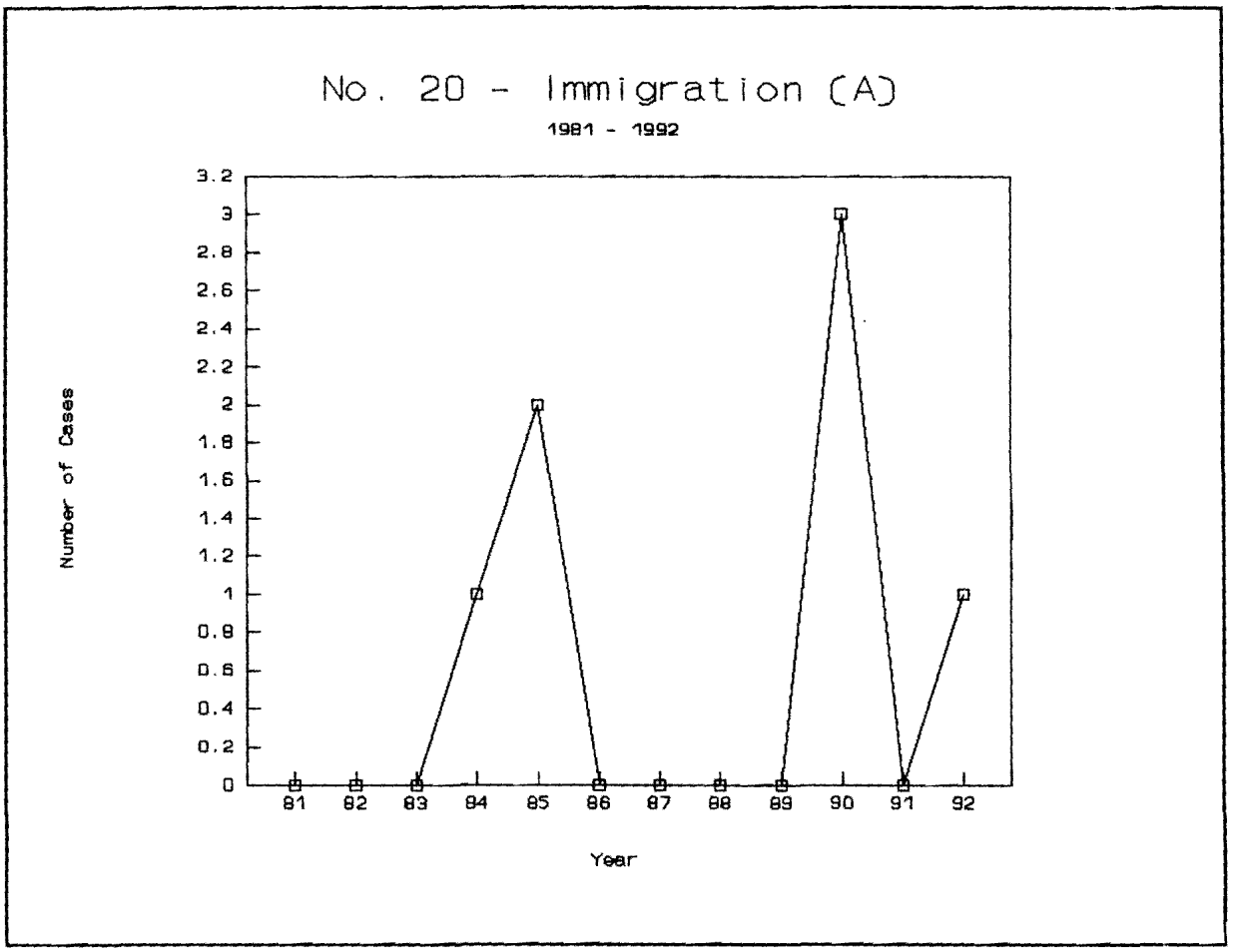

No. 18 - All Other Civil (L)
1981- 1992
Number of Cases
75
70
65
60
55
50
45
40
35
30
81
82
83
84
85
86
87
88
89
90
91
92
Year



THIS GRAPH WAS DEVELOPED FROM THE 1992 YEAR DATA IN TABLE 5 (Page 99).

KEY TO NATURE OF OFFENSE

A. IMMIGRATION
B. EMBEZZLEMENT
C. WEAPONS & FIREARMS
D. ESCAPE
E. BURGLARY & LARCENY
F. MARIJUANA & CONTROLLED SUBST
G. NARCOTICS
H. FORGERY & COUNTERFEITING
I. FRAUD
J. HOMICIDE & ASSAULT
K. ROBBERY
L. ALL OTHER CRIMINAL FELONIES


No. 20 - Immigration (A)
1981 - 1992
Number of Cases
3.2
3
2.8
2.6
2.4
2.2
2
1.8
1.6
1.4
1.2
1
0.8
0.6
0.4
0.2
0
81
82
83
84
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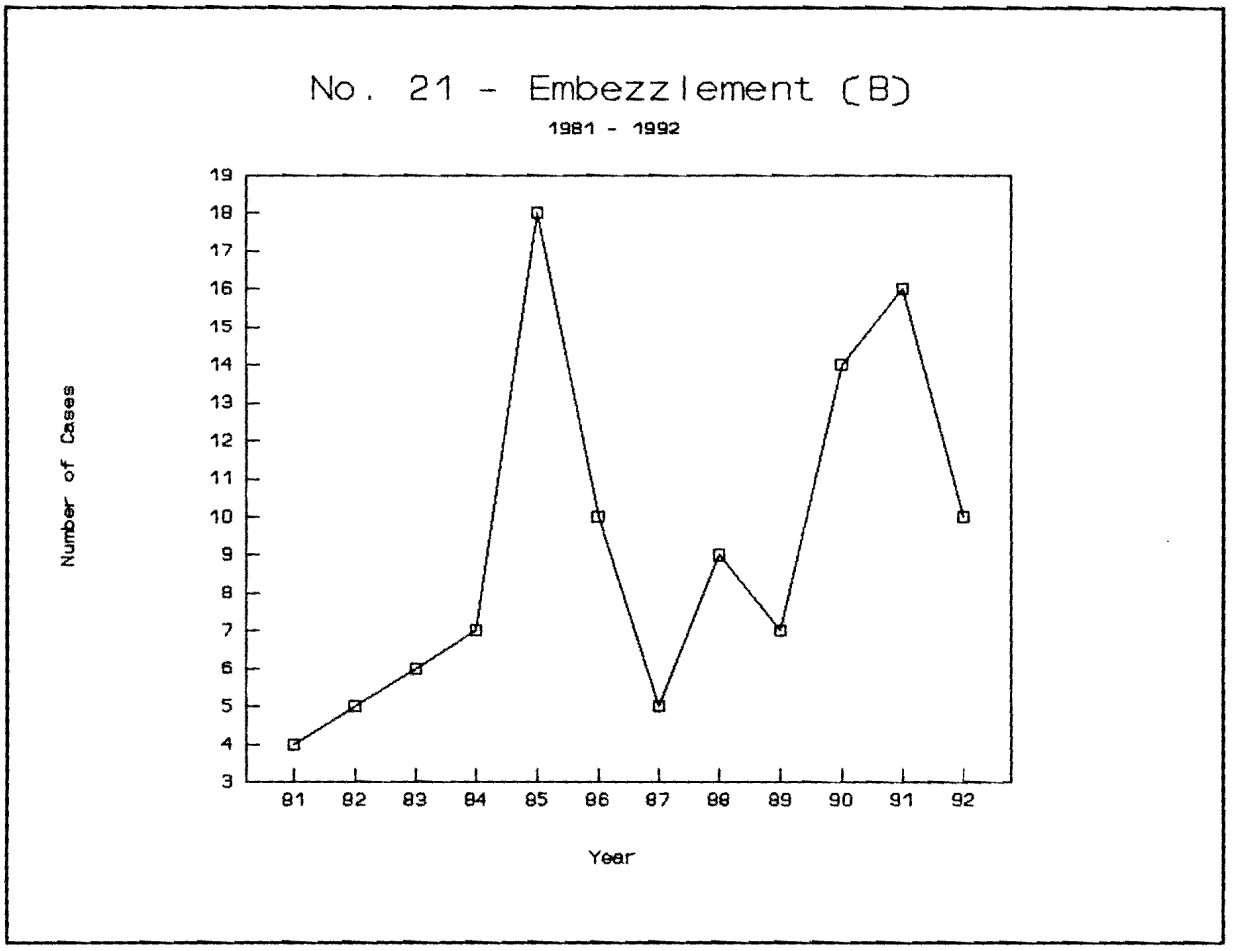
91
92
Year


No. 21 - Embezzlement (B)
1981 - 1992
Number of Cases
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
81
82
83
84
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86
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88
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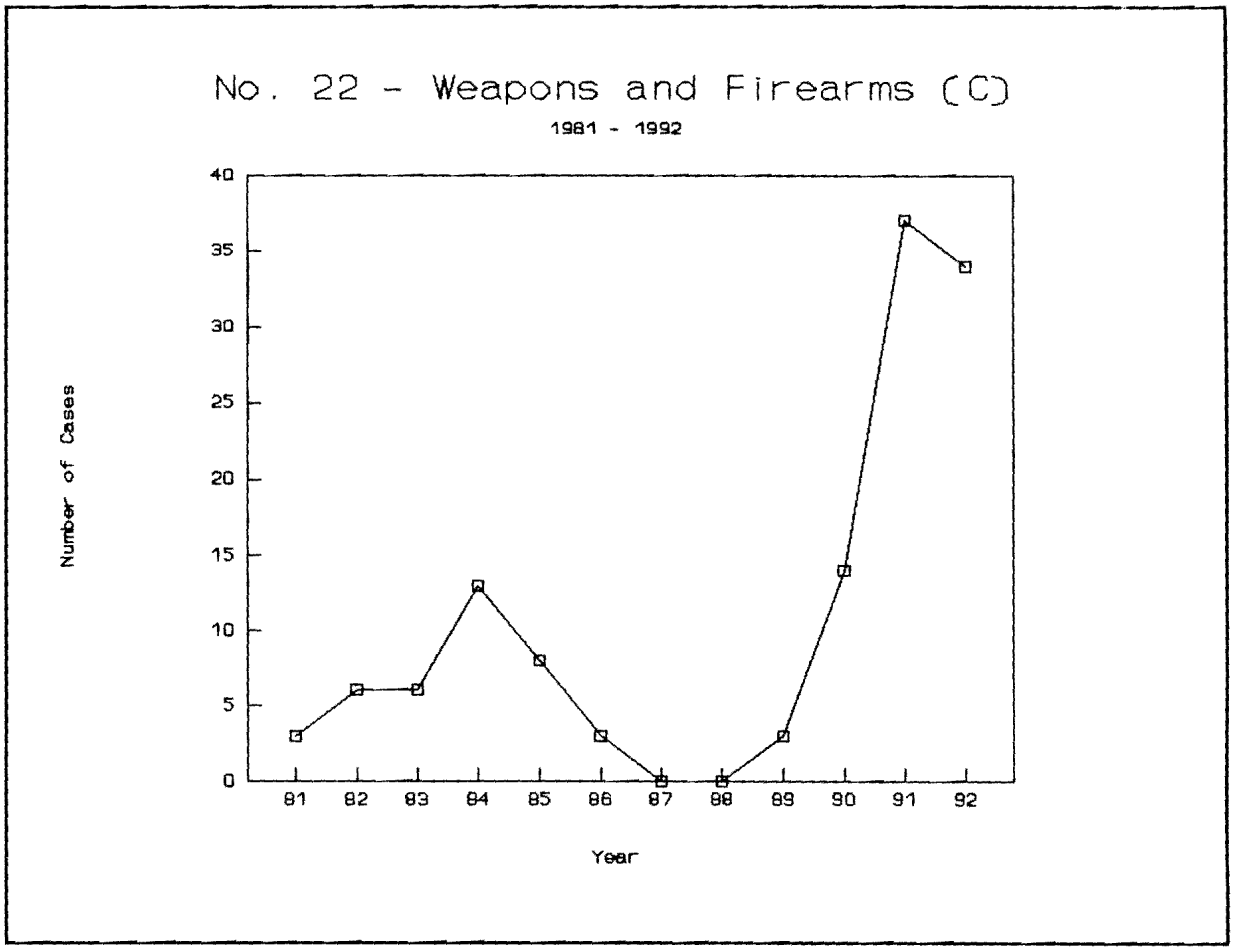
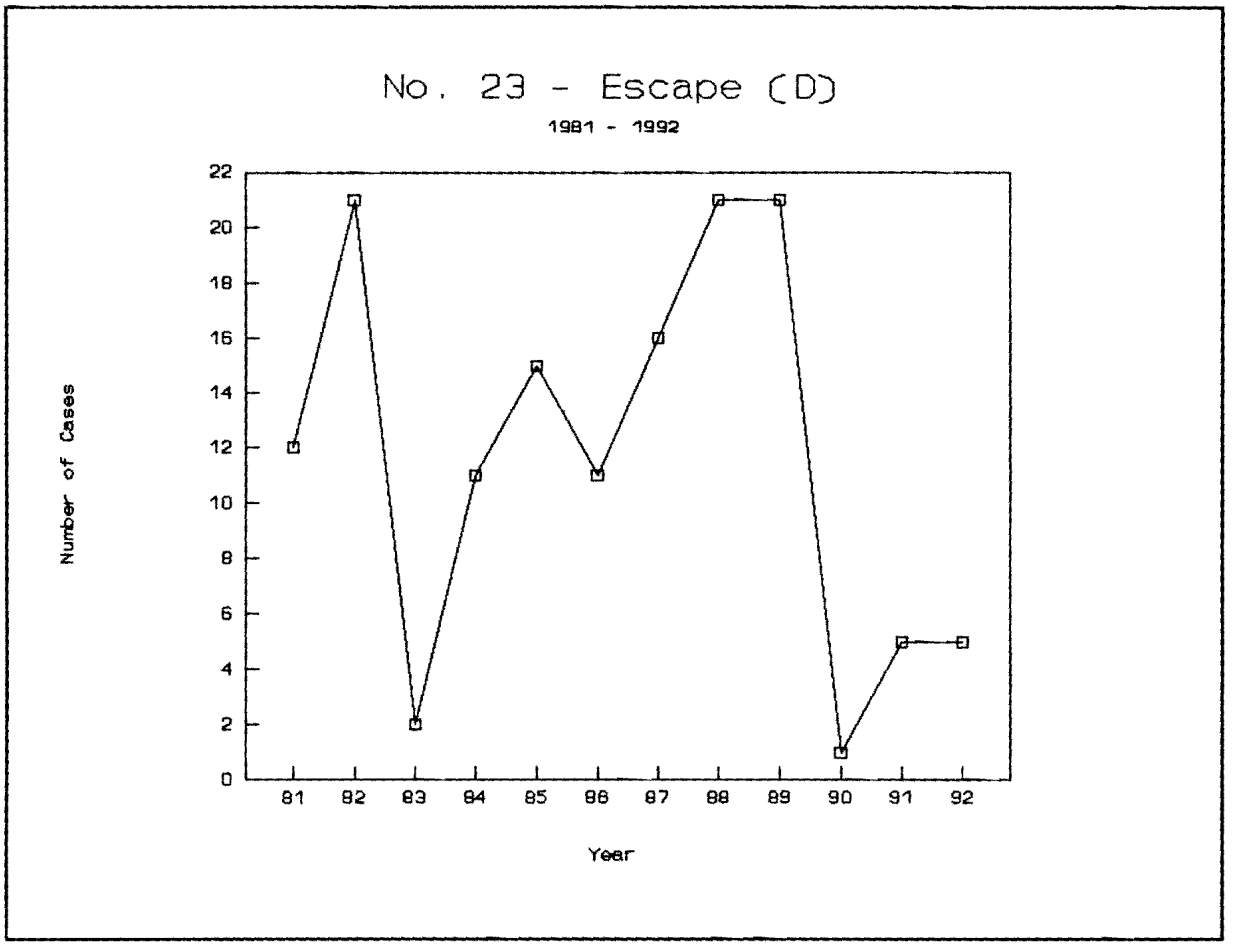
90
91
92
Year


No. 22 - Weapons and Firearms (C)
1981 - 1992
Number of Cases
0
5
10
15
20
25
30
35
40
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 23 - Escape (D)
1981 - 1992
Number of Cases
0
2
4
6
8
10
12
14
16
18
20
22
81
82
83
84
85
86
87
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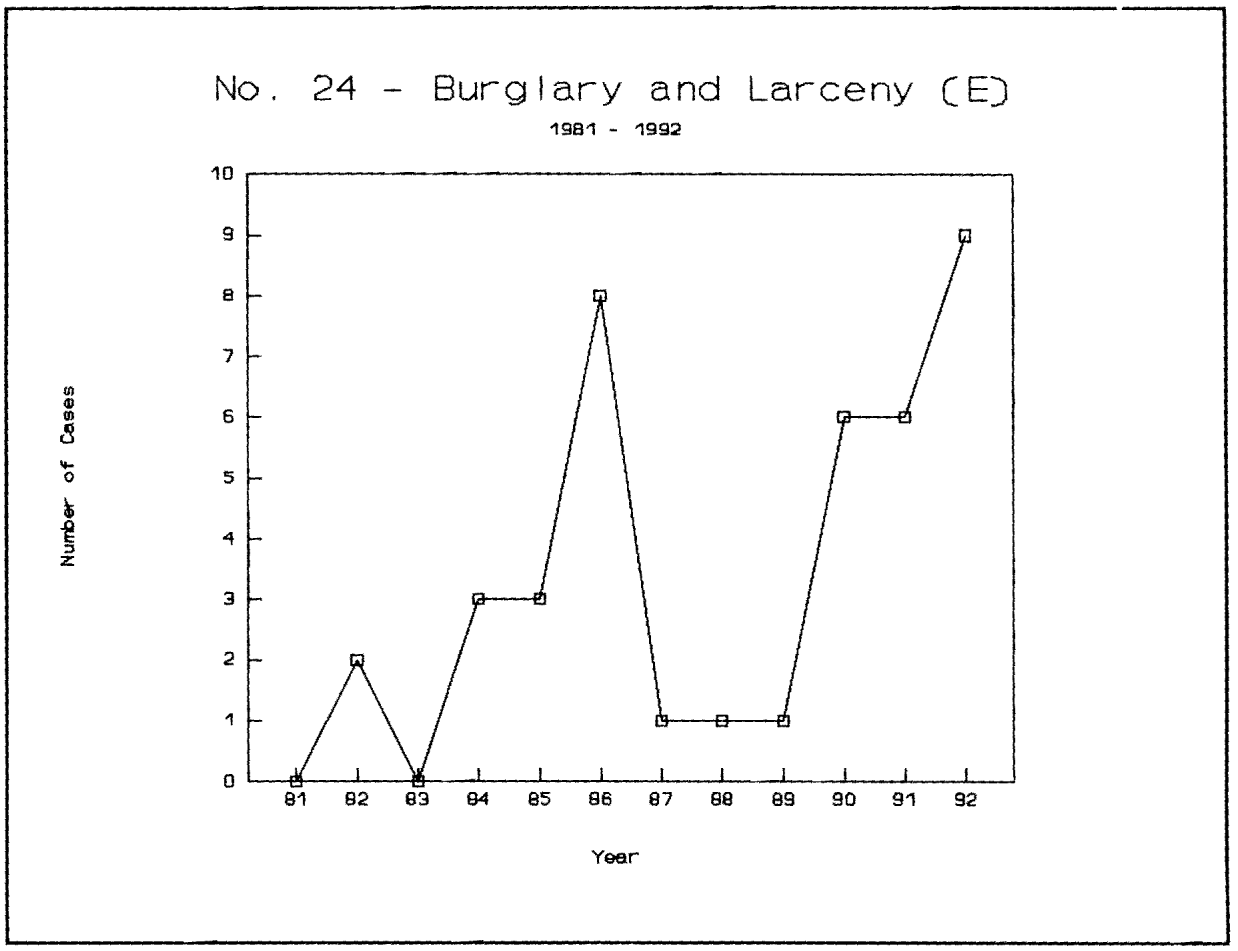
92
Year


No. 24 - Burglary and Larceny (E)
1981 - 1992
Number of Cases
0
1
2
3
4
5
6
7
8
9
10
81
82
83
84
85
86
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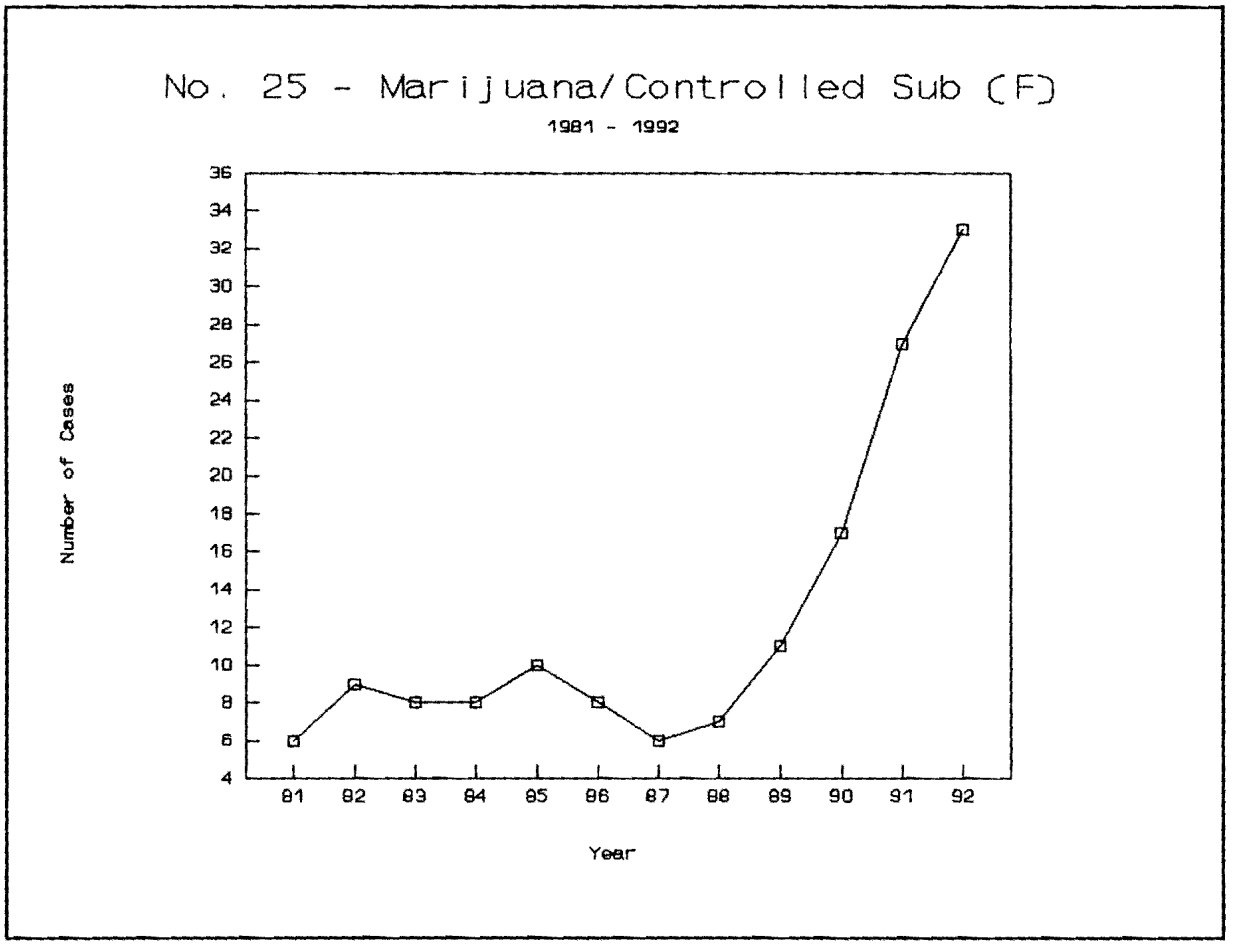
Year


No. 25 - Marijuana/Controlled Sub (F)
1981 - 1992
Number of Cases
36
34
32
30
28
26
24
22
20
18
16
14
12
10
8
6
4
81
82
83
84
85
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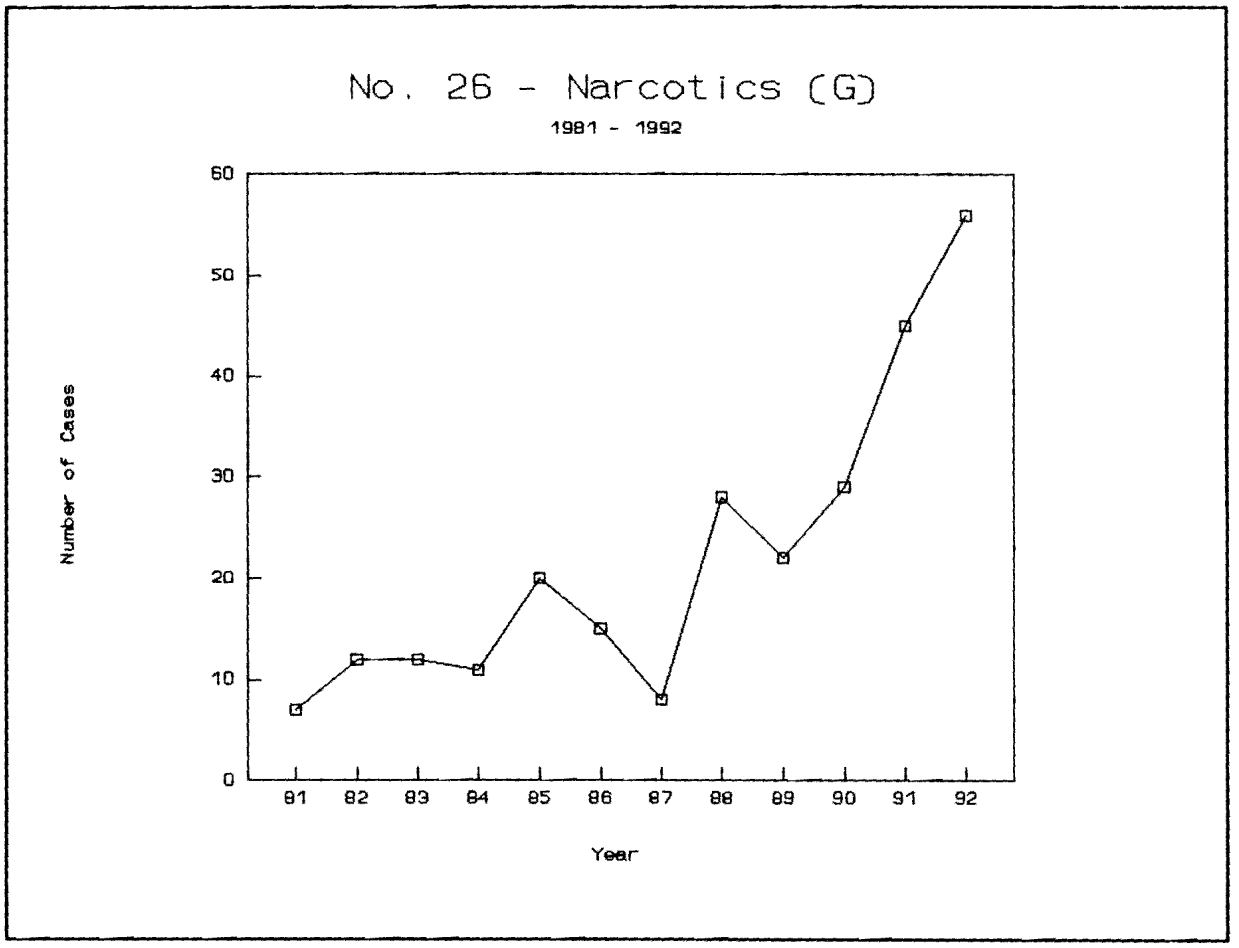
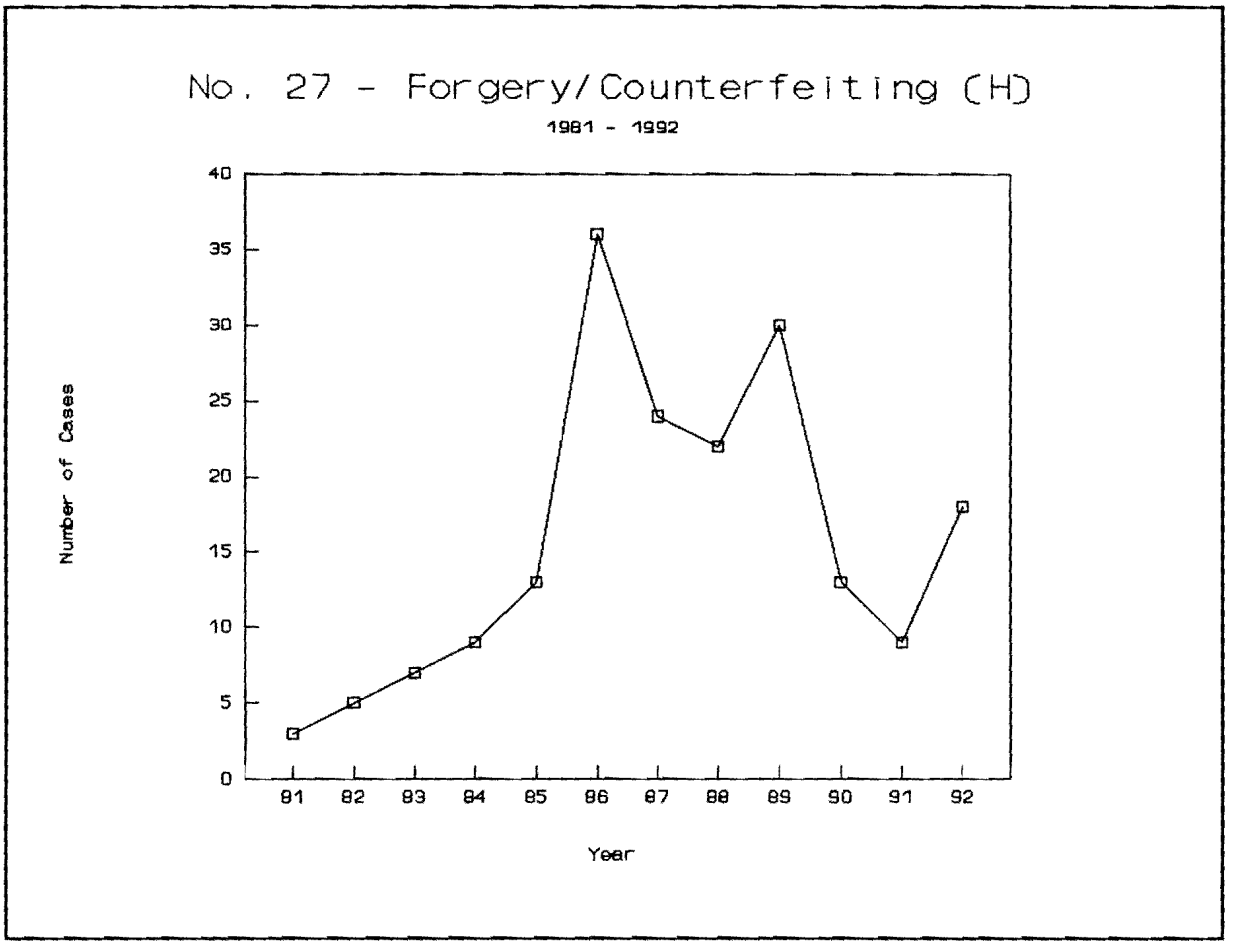
91
92
Year


No. 26 - Narcotics (G)
1981 - 1992
Number of Cases
60
50
40
30
20
10
0
81
82
83
84
85
86
87
88
89
90
91
92
Year


No. 27 - Forgery/Counterfeiting (H)
1981 - 1992
Number of Cases
0
5
10
15
20
25
30
35
40
81
82
83
84
85
86
87
88
89
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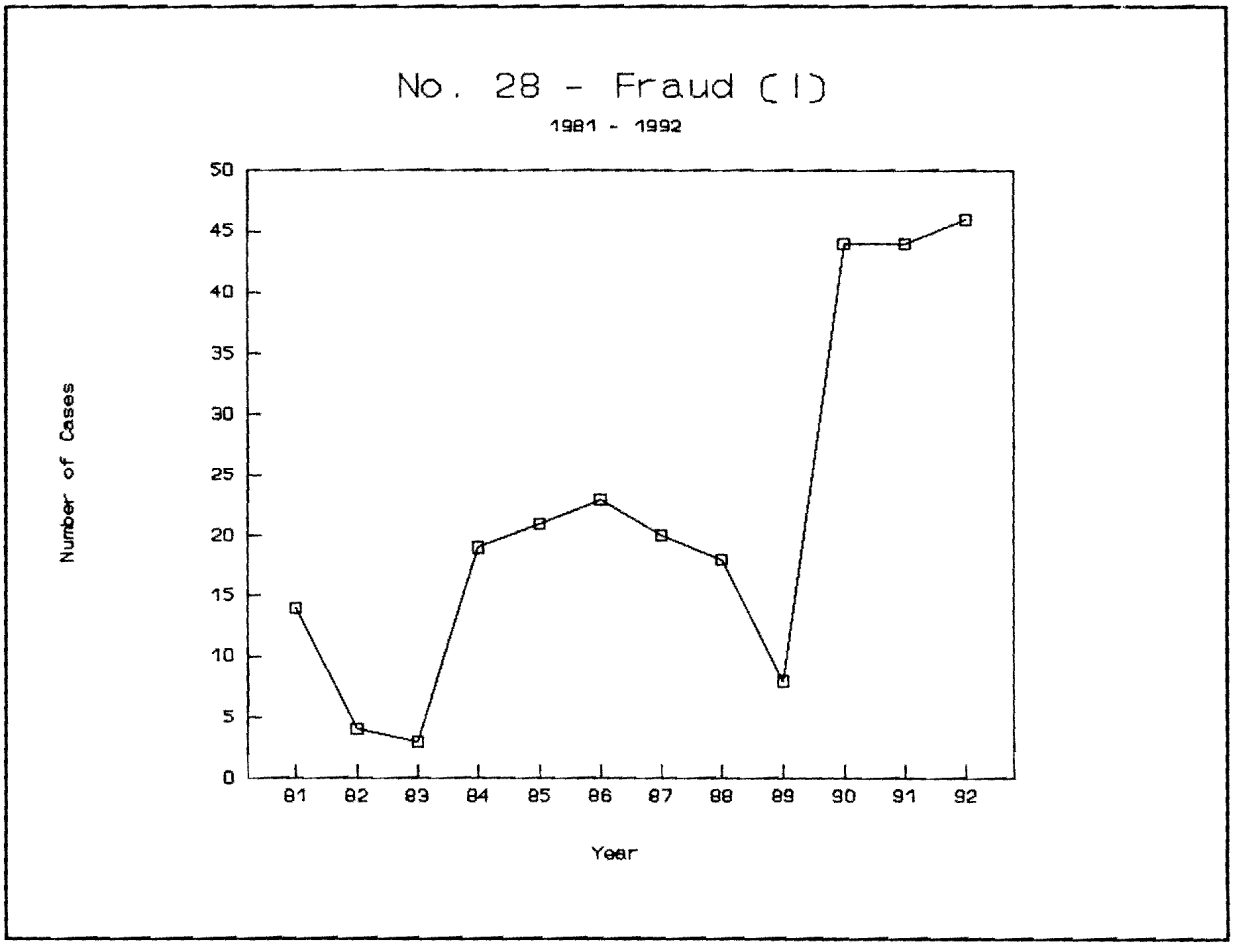
92
Year


No. 28 - Fraud (I)
1981 - 1992
Number of Cases
50
45
40
35
30
25
20
15
10
5
0
81
82
83
84
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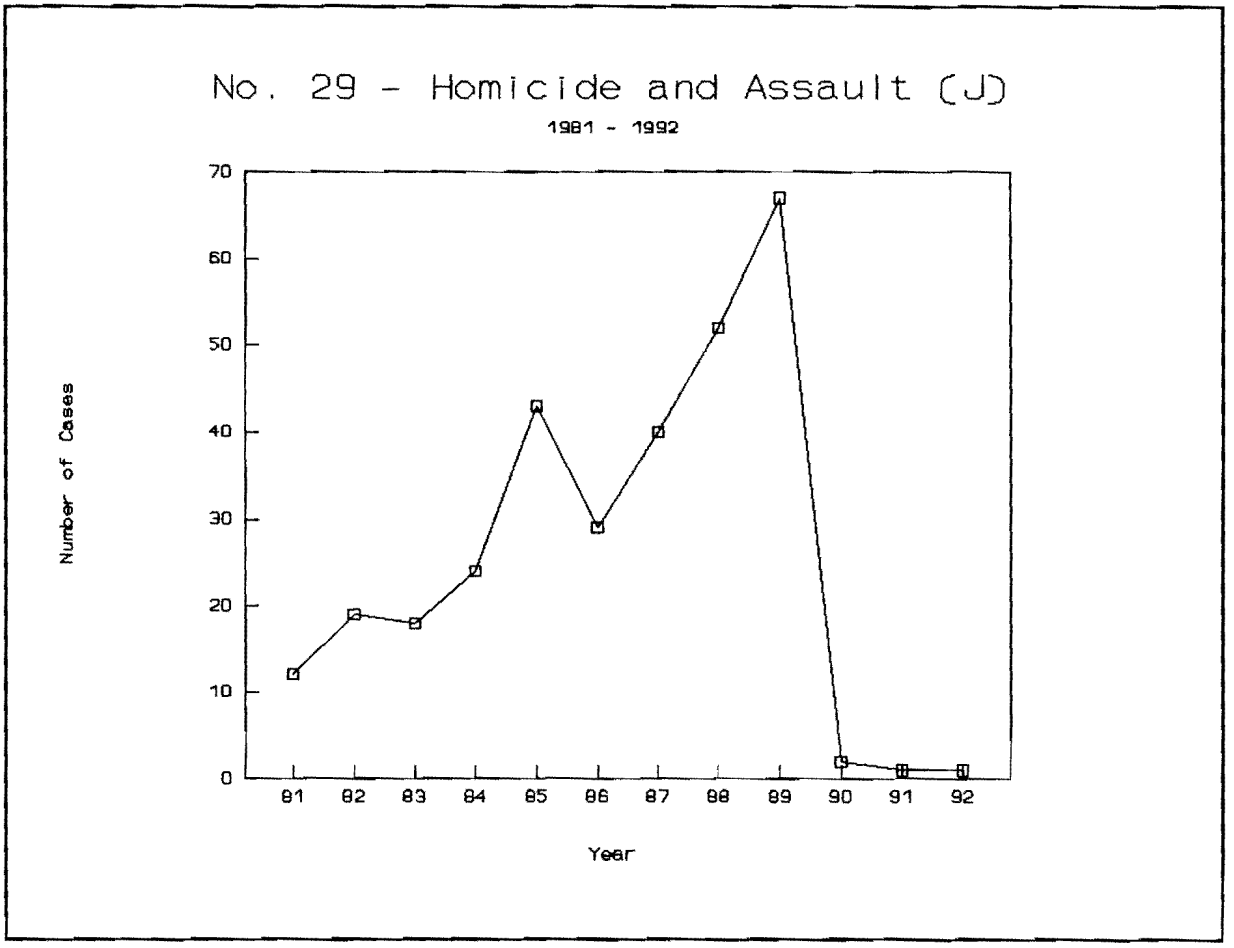
Year


No. 29 - Homicide and Assault (J)
1981 - 1992
Number of Cases
70
60
50
40
30
20
10
0
81
82
83
84
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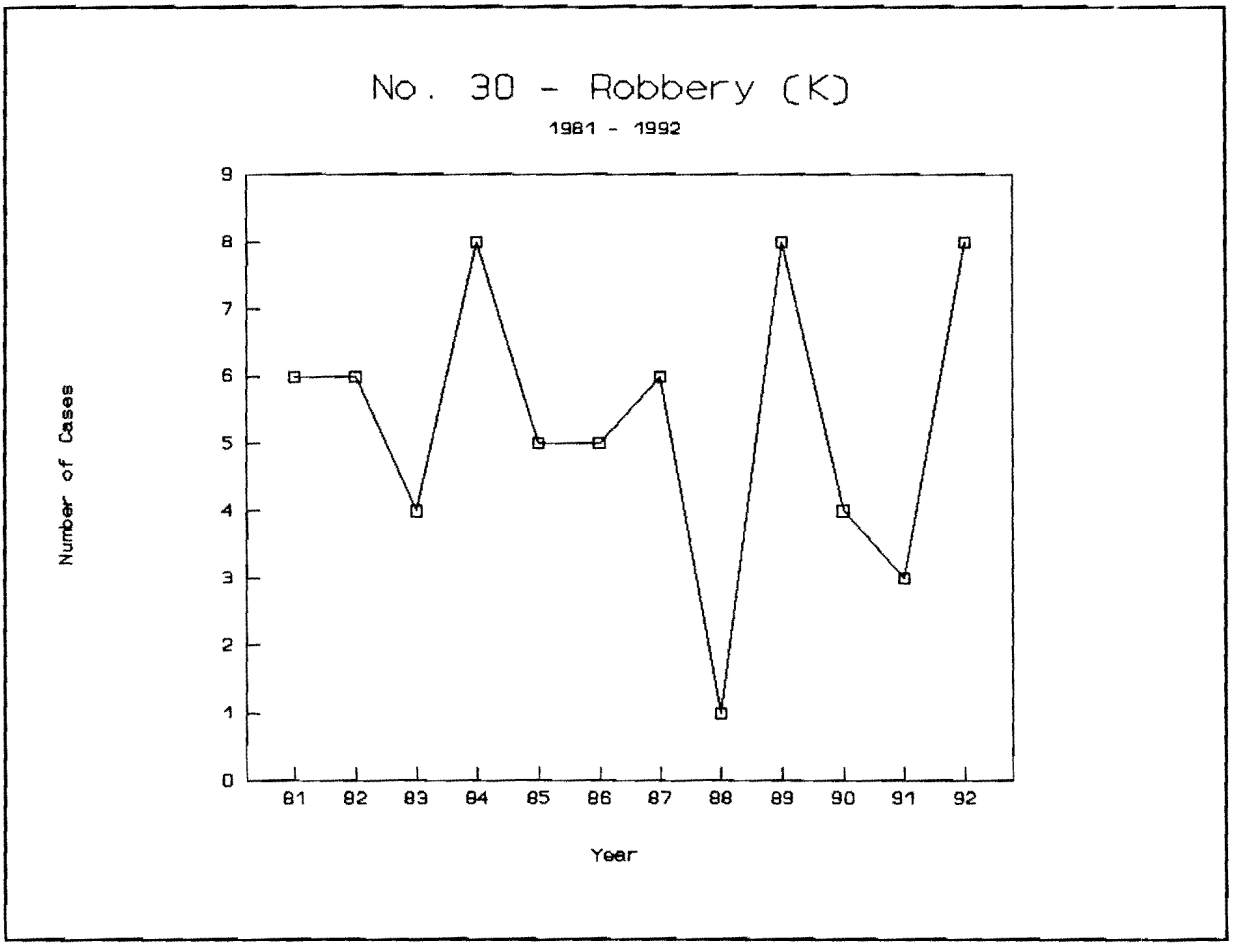
92
Year


No. 30 - Robbery (K)
1981 - 1992
Number of Cases
0
1
2
3
4
5
6
7
8
9
81
82
83
84
85
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90
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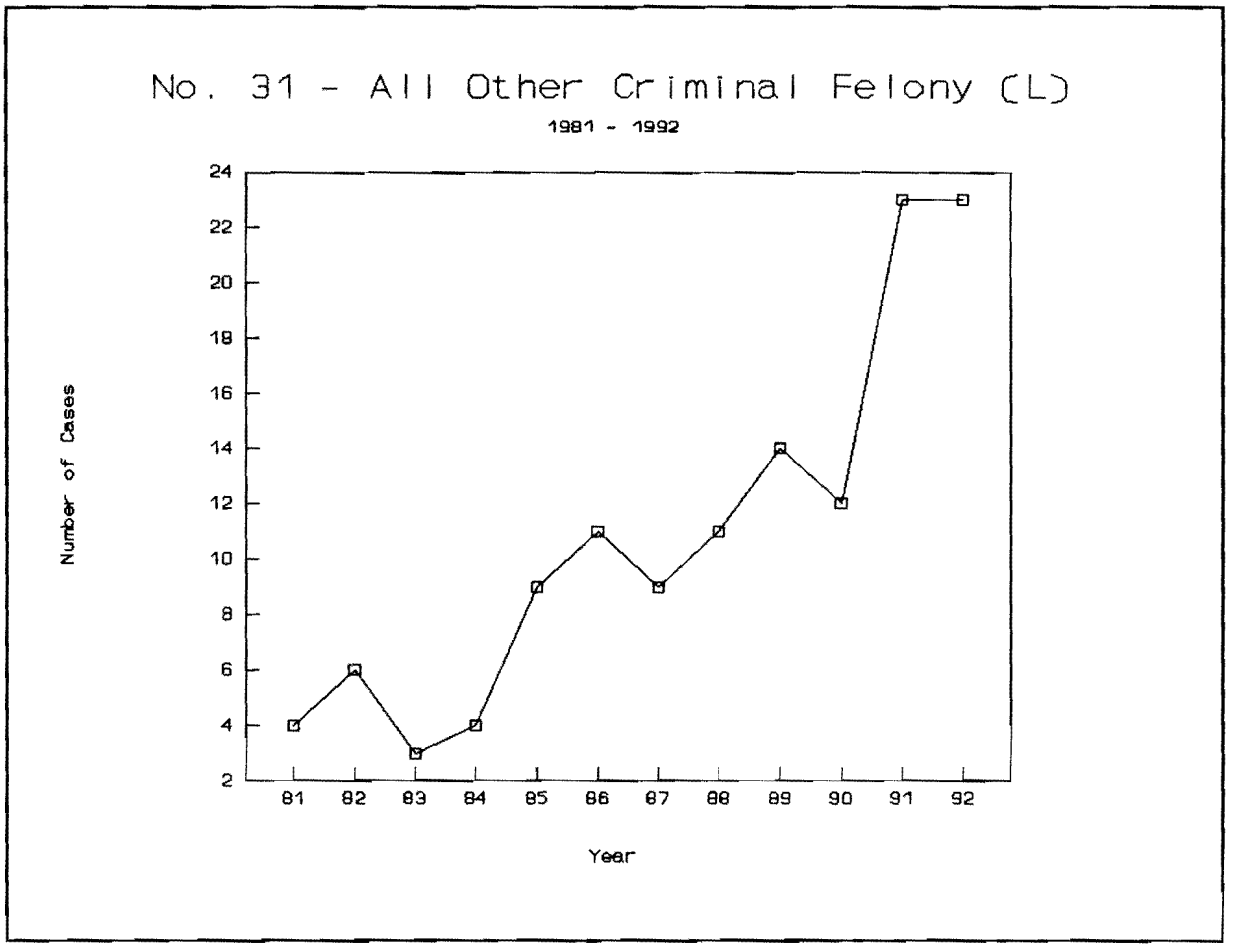
Year


No. 31 - All Other Criminal Felony (L)
1981 - 1992
Number of Cases
24
22
20
18
16
14
12
10
8
6
4
2
81
82
83
84
85
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Year

APPENDIX G

FEDERAL RULES OF CIVIL PROCEDURE
Proposed Amendments

ANTICIPATED CHANGES TO THE FEDERAL RULES OF CIVIL PROCEDURE

DISCOVERY AND SCHEDULING ORDER

FEDERAL RULES OF CIVIL PROCEDURE
Proposed Amendments
(To be effective December 1, 1993)

Rule 1. Scope and Purpose of Rules.

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 4. Summons.

(a) Form. The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

(b) Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) Service with Complaint: by Whom Made.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint.

(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis pursuant to 28 U.S.C. Sec. 1915, or is authorized to proceed as a seaman under 28 U.S.C. Sec. 1916.

(d) Waiver of Service: Duty to Save Costs of Service: Request to Waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) An individual corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant

waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if he defendant is addressed outside any judicial district of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing. If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs,including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Service Upon Individuals within a Judicial District of the United States. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(g) Service Upon Infants and Incompetent Persons. Service Upon an infant or an incompetent person in a judicial district of the United States shall be effected in the manner prescribed by the law of the state in which the service is made for the service of summons or like process upon any such defendant in an action brought in the courts of general jurisdiction of that state. Service upon an infant or incompetent person in a place not within any judicial district of the United States shall effected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.

(h) Service Upon Corporations and Associations. Unless otherwise provided by federal law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to an

officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant or

(2) in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.

(i) Service Upon the United State, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) Service upon an officer, agency, or corporation of the United States shall be effected by serving the United States in the manner prescribed by paragraph (1) of this subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer,agency, or corporation.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers, agencies, or corporations of the United States if the plaintiff has effected service on either the United States attorney or the Attorney General of the United States.

(j) Service Upon Foreign, State, or Local Governments.

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected-pursuant to 28 U.S.C. S 1608.

(2) Service upon a state, municipal corporation, or other governmental organization subject to suit, shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(k) Territorial Limits of Effective Service.

(1) Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction of a court

of general jurisdiction in the state in which the district court is located, or

(B) who is a party joined under Rule 14 or Rule 19 and is served at a place within a judicial district of the United States and not more than 100 miles from the place which the summons issues, or

(C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. 1335, or

(D) when authorized by a statute of the United States.

(2) If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

(l) Proof of Service. If service is not waived, the person effecting service shall make proof thereof to the court. If service is made by a person other than a United States marshal or deputy United States marshal, the person shall make affidavit thereof. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) Time Limit for Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time, provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

(n) Seizure of Property: Service of Summons Not Feasible.

(1) If a statute of the United States so provides, the court may assert jurisdiction over property. Notice to claimants of the property shall then be sent in the manner provided by the statute or by service of a summons under this rule.

(2) Upon a showing that personal jurisdiction over a defendant cannot, in the district where the action is brought, be obtained with reasonable efforts by service of summons in any manner authorized by this rule, the court may assert jurisdiction over any of the defendant's assets found within the district by seizing the assets under the circumstances and in the manner provided by the law of the state in which the district court is located.

Rule 4.1. Service of Other Process.

(a) Generally. Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(1). The process may be served anywhere within the territorial limits of the state in which the district court is located, and, when authorized by a statute of the United States, beyond the territorial limits of that state.

(b) Enforcement of Orders: Commitment for Civil Contempt. An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States may be served and enforced in any district. Other orders in civil contempt proceedings shall be served in the state in which the court issuing the order to be enforced is located or elsewhere within the United States if not more than 100 miles from the place at which the order to be enforced was issued.

Rule 5. Service and Filings of Pleadings and Other Papers.

* * * *

(e) **Filing with the Court Defined.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. A court may, by local rule, permit papers to be filed by facsimile or other electronic means if such means are authorized by and consistent with standards established by the Judicial Conference of the United States. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rules or practices.

Rule 11. Signing of Pleadings, Motions, and Other Papers;Representations to Court; Sanctions.

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the persons knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court shall, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative,the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanctions: Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of one or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the

court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 12. Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on the Pleadings.

(a) When Presented.

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer

(A) within 20 days after being served with the summons and complaint, or

(B) if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent or within 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(3) The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counter claim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted.

(4) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the court-denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

* ** *

Rule 15. Amended and Supplemental Pleading.

* * * *

(c) Relation Back of Amendments An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides

the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the United States Attorney, or United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

* * * *

Rule 16. Pretrial Conferences; Scheduling; Management.

* * * *

(b) Scheduling and Planning. Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, shall, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join the other parties and to amend the pleadings;

(2) to file motions; and

(3) to complete discovery.

The scheduling order may also include

(4) modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;

(5) the date or dates for conferences before trial, a

(6) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge.

(c) Subjects for Consideration at Pretrial Conferences. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

(1) the formulation and simplification of the issues,including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence, and imitations or restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence;

(5) the appropriateness and timing of summary adjudication under Rule 56;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) the advisability of referring matters to a magistrate judge or master;

(9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;

(10) the form and substance of the pretrial order;

(11) the disposition of pending motions;

(12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(13) an order for separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule S2(c);

(15) an order establishing a reasonable limit on the time allowed for presenting evidence; and

(16) such other matters as may facilitate the just,speedy, and inexpensive disposition of the action. At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

* * * *

Rule 26. General Provisions Governing Discovery; Duty of

Disclosure

(a) Required Disclosures: Methods to Discover Additional Matter.

(1) Initial Disclosures. Except to the extent otherwise stipulated or directed by the court, a party shall, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Unless otherwise stipulated or directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under subdivision (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid

for the study and the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under -paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

(3) Pretrial Disclosures. In addition to the disclosures required in the preceding paragraphs, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises. Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) Form of Disclosures: Filing. Unless otherwise directed by order or local rule, all disclosures under paragraphs (1) through (3) shall be made in writing, signed, served, and promptly filed with the court.

(5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by

order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonable calculated to lead to the discovery of admissible evidence.

(2) Limitations. By order or by local rule, the court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that; (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

* * * *

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subdivision (a1(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35 (b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and (ii) with respect to discovery obtained under subdivision (b)(4)(B)of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees

and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certificate that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery. Except when authorized under these rules or by local rule, order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by subdivision (f). Unless the court upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party

is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Disclosures and Responses. A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired, if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information is closed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery processor in writing.

(f) Meeting of Parties: Planning for Discovery. Except in actions exempted by local rule or when otherwise ordered, the parties shall, as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosure required by subdivision (a)(1), and to develop a proposed discovery plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under subdivision (a) or local rule, including a statement as to when disclosures under subdivision (a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(4) any other orders that should be entered by the court under subdivision (c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good

faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the plan.

(g) Signing of Disclosures. Discovery Requests. Responses and Objections.

(1) Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Rule 28. Persons Before Whom Depositions May Be Taken.

* * * *

(b) In Foreign Countries. Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not

captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in there name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

* * * *

Rule 29. Stipulations Regarding Discovery Procedure.

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

Rule 30. Depositions Upon Oral Examination.

(a) <u>When Depositions May Be Taken: When Leave Required</u>.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the United States and be unavailable for examination in this country unless deposed before that time.

(b) Notice of Examination: General Requirements: Method of Recording: Production of Documents and Things: Deposition of organization: Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the costs of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date,time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

* * * *

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by such means is taken in the district and at the place where the deponent is to

answer questions.

(c) Examination and Cross-Examination: Record of Examination: Oath: Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Federal Rules of Evidence, except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule. All objection made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented,to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3).

(2) By order or local rule, the court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistently with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule

interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

* * * *

(c) Form of Presentation. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

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Rule 33. Interrogatories to Parties.

(a) Availability. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d).

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory

shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

d) Option to Produce Business Records. * * * *

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

* * * *

(b) Procedure. The request shall set forth either by individual item or by category the items to be inspected and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

* * * *

Rule 36. Requests for Admission.

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the

pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

* * * *

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Rule 37. Failure to Make Disclosure or Cooperate in Discovery:Sanctions

(a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Appropriate Court. An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the district where the discovery is being, or is to be, taken.

(2) Motion.

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer

with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6), or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

* * * *

(c) Failure to Disclose: False or Mislead in a Disclosure: Refusal to Admit.

(1) A party that without substantial justification fails to disclose information as required by Rule 26(a) or 26(e)(1) shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

* * * *

(g) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in the development and submission of a proposed discovery plan as required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees caused by the failure.

Rule 38. Jury Trial of Right

* * * *

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to the issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

* * * *

(d) Waiver. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Rule 50. Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings.

(a) Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

* * * *

* * * *

Rule 52. Findings by the Court; Judgment on Partial Findings.

* * * *

(c) Judgment on Partial Findings. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

Rule 53. Masters.

* * * *

(a) Appointment and Compensation. The court in which any action is pending may appoint a special master therein. As used in these rules, the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct; provided that this provision for compensation shall not apply when a United State~ magistrate judge is designated to serve as a master. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it. Upon the consent of the parties, a magistrate judge may be designated to serve as a special master without regard to the provisions of this subdivision.

* * * *

(f) Application to Magistrate Judge. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge expressly provides that the reference is made under this rule.

Rule 54. Judgments; Costs.

* * * *

(d) Costs: Attorneys' Fees.

(1) Costs Other than Attorneys' Fees. Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days-thereafter, the action of the clerk may be reviewed by the court.

(2) Attorneys' Fees.

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment, must specify the judgment and the statute, rule, or other grounds entitling the moving party to the

award, and must state the amount or provide a fair estimate of the amounts sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e) or Rule 78. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a) and a judgment shall be set forth in a separate document as provided in Rule 58.

(D) By local rule the court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of subdivision (b) thereof and may refer a motion for attorneys' fees to a magistrate judge under Rule 72(b) as if a dispositive pretrial matter.

(E) The provisions of subparagraphs (A) through (D) do not apply to claims for fees and expenses as sanctions for violations of these rules or under 28 U.S.C. 1927.

Rule 58. Entry of Judgment.

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorney's fees is made under Rule 54(d)(2), the court, before a notice of appeal has been filed and has become effective, may order that the motion have the same effect under Rule 4(a)(4) of the Federal Rules of Appellate Procedure as a timely filed motion under Rule 59. Attorneys shall not submit forms of judgment except upon the direction of the court, and these directions shall not be given as a matter of course.

Rule 71A. Condemnation of Property.

* * * *

(d) Process.

* * * *

(3) Service of Notice.

(A) Personal Service. Personal service of the notice (but without copies of the complaint) shall be made in accordance with Rule 4 upon a defendant whose residence is known and who resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States.

(B) Service by Publication. * * * *

(4) Return; Amendment. Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons under Rule 4.

* * **

Rule 72. Magistrates Judges; Pretrial Orders.

(a) Nondispositive Matters. A magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made. The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate's judge's order found to be clearly erroneous or contrary to law.

(b) Dispositive Motions and Prisoner Petitions. A magistrate judge assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate judge, and a record may be made of such other proceedings as the magistrate judge deems necessary. The magistrate judge shall enter into the record a recommendation for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate judge deems sufficient, unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further

evidence, or recommit the matter to the magistrate judge with instructions.

Rule 73. Magistrate Judges; Trial by Consent and Appeal Options.

(a) Powers: Procedure. When specially designed to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate judge may exercise the authority provided by Title 28, U.S. C. Sec. 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in accordance with the requirements of Title 28, U.S.C. S 636(c)(7).

(b) Consent. When a magistrate judge has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate judge of civil jurisdiction over the case, as authorized by Title 28, U.S.C. Sec. 636(c). If, within the period specified by local rule, the parties agree to a magistrate judge's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

A district judge, magistrate judge, or other court official may again advise the parties of the availability of the magistrate judge, but, in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. A district judge or magistrate judge shall not be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate judge.

The district judge, for good cause shown on the judge's own initiative, or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate judge under this subdivision.

(c) Normal Appeal Route. In accordance with Title 28 U.S.C. Sec. 636 (c)(3), unless the parties otherwise agree to the optional appeal route provided for in subdivision (d) of this rule, appeal from a judgment entered upon direction of a magistrate judge in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.

(d) Optional Appeal Route. In accordance with Title 28 U.S.C. Sec. 636(c)(4), at the time of reference to a magistrate judge, the parties may consent to appeal of the record to a district judge of the court and thereafter, by petition only, to the court of appeals.

Rule 74. Method of Appeal from Magistrate Judge to District Judge Under Title 28, U.S.C. 636 (c) (4) and Rule 73 (d).

(a) When Taken. When the parties have elected under Rule 73(d) to proceed by appeal to a district judge from appealable decision made by a magistrate judge under the consent provisions of Title 28, U.S.C. Sec. 636(c)(4), an appeal may be taken from the decision of a magistrate judge by filing with the clerk of the district court a notice of appeal within 30 days of the date of

entry of the judgment appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days thereafter, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by the timely filing of any of the following motions with the magistrate judge by any party, and the full time for appeal from the judgment entered by the magistrate judge commences to run anew from entry of any of the following orders: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

An interlocutory decision or order by a magistrate judge which, if made by a district judge, could be appealed under any provision of law, may be appealed to a district judge by filing a notice of appeal within 15 days after entry of the decision or order, provided the parties have elected to appeal a district judge under Rule 73(d). An appeal of such interlocutory decision or order shall not stay the proceedings before the magistrate judge unless the magistrate judge or district judge shall so order.

Upon a showing of excusable neglect, the magistrate judge may extend the time for filing a notice of appeal upon motion filed not later than 20 days after the expiration of the time otherwise prescribed by this rule.

* * * *

(d) Stay Pending Appeal. Upon a showing that the magistrate judge has refused or otherwise failed to stay the judgment pending appeal to the district judge under Rule 73(d), the appellant may make application for a stay to the district judge with reasonable notice to all parties. The stay may be conditioned upon the filing in the district court of a bond or other appropriate security.

Rule 75. Proceedings on Appeal From Magistrate Judge to District Judge Under Rule 73 (d)

* * * *

(b) Record on Appeal.

(1) Composition. The original papers and exhibits filed with the Clerk of the district court, the transcript of the proceedings, if any, and the docket entries shall constitute the record on appeal. In lieu of this record the parties, within 10 days after the filing of the notice of appeal, may file a joint statement of the case showing how the issues presented by the appeal arose and were decided by the magistrate judge, and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented.

(2) Transcript. Within 10 days after filing the notice of appeal the appellant shall make arrangements for the production of

a transcript of such parts of the proceedings as the appellant deems necessary. Unless the entire transcript is to be included, the appellant, within the time provided above, shall serve on the appellee and file with the court a description of the parts of the transcript which the appellant intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, within 10 days after the service of the statement of the appellant, the appellee shall serve on the appellant and file with the court a designation of additional parts to be included. The appellant shall promptly make arrangements for inclusion of all such parts unless the magistrate judge, upon motion, exempts the appellant from providing certain parts, in which case the appellee may provide for their transcription.

(3) Statement in Lieu of Transcript. If no record of the proceedings is available for transcription, the parties shall, within 10 days after the filing of the notice of appeal, file a statement of the evidence from the best available means to be submitted in lieu of a transcript. If the parties cannot agree they shall submit a statement of their differences to the magistrate judge for settlement.

* * * *

Rule 76. Judgment of the District Judge on the Appeal Under Rule 73(d) and Costs

(a) Entry of Judgment. When the parties have elected under Rule 73(d) to appeal from a judgment of the magistrate judge to a district judge, the clerk shall prepare, sign, and enter judgment in accordance with the order or decision of the district judge following an appeal from a judgment of the magistrate judge, unless the district judge directs otherwise. The clerk shall mail to all parties a copy of the order or decision of the district judge.

* * * *

(c) Costs. Except as otherwise provided by law or ordered by the district judge, costs shall be taxed against the losing party; If a judgment of the magistrate judge is affirmed in part or reversed in part, or is vacated, costs shall be allowed only as ordered by the district judge. The cost of the transcript, if necessary for the determination of the appeal, and the premiums paid for bonds to preserve rights pending appeal shall be taxed as costs by the clerk.

ANTICIPATED CHANGES TO THE FEDERAL RULES OF CIVIL PROCEDURE

Presented by

J. Rich Leonard

United States Bankruptcy Judge

November 19, 1992

* These materials are a collaborative effort of J. Rich Leonard, United States Bankruptcy Judge for the Eastern District of North Carolina, David W. Daniel, Clerk of Court, United States District Court for the Eastern District of North Carolina, and Carol Manning Morgan, Staff Attorney, United States District Court for the Eastern District of North Carolina.

Introduction

In September 1992, the Judicial Conference adopted sweeping changes to the Federal Rules of Civil Procedure. Under the Rules Enabling Act, the proposed amendments approved by the Conference will be transmitted to the Supreme Court, which has the power to prescribe rules of practice and procedure for the federal courts. After its review, the Court traditionally transmits the rule changes it approves to Congress before May 1 of that year. The new rules then take effect on December 1 of the same year, unless affected by Congressional action. Therefore, it is probable that on December 1, 1993, significant changes to the Federal Rules of Civil Procedure will become effective. Since the rule changes pertaining to service and discovery will radically alter the civil practice of attorneys litigating in federal court, it is vital that federal practitioners and administrators familiarize themselves with these changes and prepare for the time when those rules will be in force.

Accordingly, I have provided two sets of material. The first section is a copy of the current rules with the proposed additions underlined and deletions marked through. The second section is a discussion of the proposed changes and their effect on federal civil practice.

RULE 1

Overview and Rationale

Rule 1 has been revised to add the words "and purpose" to the title of the section. In addition, the rule text now refers to how the rules are construed "and administered." The purpose behind these minor revisions is to recognize the court's affirmative duty to ensure that civil litigation is resolved fairly and efficiently, a responsibility shared by the attorneys in a case.

RULE 4

Overview

Rule 4 has been amended to change the way in which a summons is issued and service of process is achieved. Specifically, the rule makes clear that the plaintiff must now prepare a summons for the clerk's signature which the plaintiff is responsible for serving upon the defendant(s). Service by a United States Marshal is required in only two situations: when the plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. §1915 or when the plaintiff is a seaman under 28 U.S.C. §1916.

Rule 4 also clarifies the process for service in a foreign country. It also provides for a waiver of service by any individual or corporate defendant. This replaces the current acknowledgment procedure. See Forms 1A and 1B. Finally, the rule has been rewritten to extend the federal court's jurisdiction over defendants in cases involving federal questions.

Specific Changes

4(b) specifically states that it is the plaintiff's responsibility to prepare and serve the summons -- not the clerk of court. In addition, 4(c) specifies two types of cases in which a marshal is required to effect service: when the plaintiff is proceeding in forma pauperis or is a seamen. 28 U.S.C. §1915, 1916.

4(d) is new, although it incorporates information from several current provisions. The rule provides that a defendant has a duty to avoid the unnecessary costs of serving a summons. Therefore, he or she can waive formal service of process by the plaintiff. Failure to do so may subject the uncooperative defendant to the cost of obtaining service upon him or her. Under the revision, the United States, other governmental agencies, infants, and incompetent persons cannot be expected to waive addition, a waiver only eliminates issues involving the sufficiency of the summons or the method by which the summons is served -- it does not affect a defendant's right to raise the defenses of lack of personal jurisdiction or venue.

4(d)(2)(A) specifically states that a request for waiver of service by a corporate defendant must be addressed to a person qualified to receive service -- not the mail room of the corporation. 4(d)(2)(B) also permits the use of alternatives to the United States mails in sending a notice and request for waiver, including private messenger services or electronic communications such as facsimile. If a defendant fails to comply

with a request for waiver, the defendant will be given opportunity to demonstrate good cause for the failure to cooperate. However, failure to demonstrate the requisite good cause may subject the defendant to the costs subsequently incurred in effecting service, as well as the costs of any motion to collect the costs of service.

4(d)(3) extends the time to answer if the defendant waives formal service. Upon waiving service, a defendant located in the United States receives sixty days from the date the notice was sent to answer or otherwise respond to the complaint, while a foreign defendant receives ninety days.

4(d)(4) makes clear that unless the waiver is returned and filed, any applicable statute of limitations is not tolled and formal service must be effected within the applicable limitations period. Therefore, if a limitations period is about to expire, the plaintiff should proceed directly through formal service methods.

4(d)(5) is a cost-shifting provision retained from the current rules which allows the court to impose costs occasioned by the defendant's failure to waive service, including any costs associated with enforcing the waiver provision. However, the rule's cost-shifting provisions do not apply when the plaintiff begins formal service on the defendant <u>before</u> the time has expired for the defendant to return the waiver. The cost-shifting provision also does not apply when a defendant is located abroad.

4(e) addresses service of a summons on parties located

within a judicial district in the United States. 4(e) permits service in any judicial district, authorizing use of the law of the state in which the district court sits, as well as use of the law of the state in which the service is effected. In addition, service may be made by the approved methods of personal or abode service or service upon an authorized agent in any judicial district.

4(f) has been revised to allow individuals located in foreign countries to be served without other specific authorization by state or federal law. It requires use of international treaties on service if one is in effect in the particular country. This provision facilitates the use of the federal long-arm law in federal enforcement actions in which a defendant cannot be served under any state law but can be constitutionally subjected to the jurisdiction of the federal court.

4(i)(1)(A) has been revised to allow a party to sue the United States by mailing a certified copy of the summons and complaint to the attention of the "civil process clerk" at the appropriate United States Attorney's office, as an alternative to personal service. In addition, 4(i)(3) allows a reasonable time for the plaintiff to cure service defects in a case involving multiple offices, agencies, or corporations of the United States, as long as the plaintiff has effected service on either the United States Attorney of the United States Attorney General.

4(k) has been amended to allow the exercise of personal

jurisdiction over a non-resident defendant against whom a claim is made arising under any federal law, if that person is not subject to the personal jurisdiction of any state.

4(m) specifically allows the court to give the plaintiff additional time to effect service, upon a showing of good cause. In addition, the rule's commentary states that the court may also grant the plaintiff additional time, without a showing of good cause, if the plaintiff is faced with situations such as the running of the statute of limitations during the attempted service period, the defendant's evasion of service, or the defendant's concealment of a service defect.

Rationale

This rule was revised to simplify service of a summons and complaint under the federal rules by widening the methods through which a defendant may be served. In addition, the revision implements the cost-saving measure of obtaining the permission of a defendant to dispense with formal service of the summons and complaint and encourages compliance by providing additional time to respond when a defendant waives formal service. The rule also simplifies the commencement of an action against the United States or its agents by providing adequate time to cure service defects.

RULE 4.1

Overview and Rationale

This is a new rule, the purpose of which is to compile

all of the provision pertaining to service of process, other than service of a summons. In addition, the rule allows for nationwide service of process on civil commitment orders which enforce injunction decrees ordering compliance with federal law. Other orders in civil commitment proceedings can be served in the issuing court's state or outside the issuing state if it is within 100 miles of the place the order was issued. The rule does not affect the court's reach in imposing criminal contempt sanctions.

RULE 5

Overview and Rationale

Rule 5(e) has been amended to conform to the broader language of Rule 25 of the Federal Rules of Appellate Procedure. Through this revision, the district court can, by local rule, permit filing of facsimile transmissions and other electronic means, subject to standards approved by the Judicial Conference.

RULE 11

Overview

The major revision of this rule is the inclusion of a "safeharbor" provision, which requires the moving party to serve the motion and then wait 21 days to file the motion. If during the 21 day period the non-moving party withdraws or corrects assertions or claims after the potential violation has been called to his or her attention, the motion should not be filed.

The rule has also been revised to remove any types of discovery matters from the scope of this rule. In addition, the rule now describes the types of sanctions a court can impose, including directives of a non monetary nature, orders to pay a penalty into the court, or, in limited circumstances, orders to pay the moving party all reasonable attorneys' fees and other expenses incurred as a result of the violation.

Finally, the rule specifically provides that a violation will subject both an attorney and his or her law firm to joint liability for sanctions.

Specific Changes

11(b) has been revised to emphasize that any person advocating a submission to the court is actually certifying that the submission is proper and warranted. The rule is also mainly applicable to propositions contained in papers submitted to the court. It does not pertain to matters raised for the first time during oral argument. However, the rule does indicate that if a person later advocates a position brought up originally in oral argument, that person may be subject to the provisions of this rule.

11(b) has also been revised to require certification that there is or likely will be "evidentiary support" for a particular allegation. This revision recognizes that sometimes a litigant may have good reason to believe that a fact is true or false but may need discovery to confirm the evidentiary basis for the allegation.

11(c) has been rewritten to deal with the process for sanctioning a party. 11(c)(1) contains a "safe harbor" provision which explicitly provides that for sanctions must be made as a separate motion and may not be filed until at least 21 days after being served. If during the 21 day period the violation is corrected or withdrawn by the party against whom sanctions are sought, the motion should not be filed with the court. In addition, since the purpose of Rule 11 is to deter rather than compensate, 11(c)(2) provides that, if a monetary sanction is imposed, it should ordinarily be paid into the court as a penalty. However, under unusual circumstances, the court may order that the offending party make monetary payment to the injured party, including the payment of attorney's fees.

A party signing, filing, submitting, or advocating a document to the court bears a non-delegable duty to the court and under 11(c)(1)(B) may be sanctioned by the court upon its own initiative. 11(c)(1)(A) states that "absent exceptional circumstances," a law firm may be held responsible when a partner, associate, or employee is found to have violated the rule, and the comments to the rule suggest that the court may also consider whether others, such as co-counsel, other law firms, or the party itself should be held accountable for their part in causing the violation.

Under the rule, litigants must be provided notice of the alleged violation and an opportunity to respond before sanctions are imposed. If the court imposes sanctions, the court must,

unless waived, indicate its reasons in a written order or on the record.

Finally, 11(c)(1)(B) provides that the court may initiate actions under this rule through a show cause order, thereby providing the person with notice and opportunity to be heard. In addition, a monetary sanction imposed after a court-initiated show cause order is limited to a penalty payable to the court which may only be imposed if the show cause order is issued before a voluntary dismissal of the action or an agreement of the parties to settle the claim.

11(d) has been rewritten to exclude discovery matters from the scope of Rule 11, in light of the provisions in Rules 26(g) and 37 which deal specifically with certification standards and sanctions in discovery.

Rationale

This provision is intended to remedy problems that have arisen in the interpretation and application of the 1983 revision of the rule. The purpose of this amendment was to increase the fairness and effectiveness of the rule as a means to deter presentation and maintenance of frivolous positions, while also reducing the frequency of Rule 11 motions. The rule retains the principle that attorneys and pro se litigants have an obligation to the court to refrain from conduct that frustrates the aims of Rule 1. The revision broadens the scope of the obligation, but also places greater constraints on the imposition of sanctions.

RULE 12

Overview and Rationale

Rule 12 has been revised to comply with the amendments to Rule 4 regarding waiver of service. Accordingly, Rule 12 now provides that a defendant who timely waives service is allowed 60 days from the date of the request was mailed in which to respond to the complaint, with an additional 30 days afforded if the request was sent out of the country.

Additionally, this amendment deletes the prior provision that gave a defendant the time period allowed under state law when service was made out-of-state, pursuant to a longarm statute.

RULE 15

Overview and Rationale

Rule 15 has been amended in form only to reflect the revision to Rule 4.

RULE 16

Overview

Rule 16 has been amended to reflect the disclosure requirements of Rules 26-37. Under the revision, the court's scheduling order must now be issued within 90 days after the appearance of the first defendant or within 120 days after the complaint has been served on a defendant. The rule also expands the issues to be considered at the pretrial conference to include

such items as limitations on the use of expert testimony, the appropriateness of summary judgment, the control and scheduling of discovery, the appropriateness of separate trials on claims, counterclaims, cross-claims, or third-party claims, setting a reasonable time limit on the presentation of evidence, and any other matters facilitating just, speedy and inexpensive disposition of the case. Finally, the rule allows the court to require a party or its representative to be present or reasonably available by telephone during any conference to consider settlement options.

Specific Changes

16(b) now provides that the scheduling order must be entered within 90 days after the date a defendant first appears or, if earlier, within 120 days after service of the complaint on the defendant. This revision provides a more appropriate time for entering the scheduling order, especially in multi-defendant cases, but it is not intended to encourage unnecessary delay in entering the scheduling order. In addition, the proposed discovery plan prepared by the parties pursuant to Rule 26(f) should be submitted to the court before the scheduling order is entered, thereby providing the court with a framework upon which to base the scheduling order.

16(b)(4) was added to emphasize the desirability of having provisions in the scheduling order relating to the timing of discovery disclosures, especially with respect to expert testimony and the use of witnesses and exhibits at trial.

16(c) now focuses on the opportunities for structuring trials, eliminating questions concerning the court's authority to enter orders to facilitate settlement or efficient, economical trial, notwithstanding a party's objection.

16(c)(4) allows the court to address, in advance of trial, the need for and limitations on the use of expert testimony, especially if the cost to the litigants would be unduly expensive compared to the needs of the case.

16(c)(5) has been added to highlight the use of Rule 56 as a consideration at the pretrial conference as a tool to avoid or reduce the scope of the trial.

16(c)(6) has been added to emphasize that appropriate controls on the extent and timing of discovery should be considered at the pretrial conference.

16(c)(9) describes the procedures that may be helpful in settling a case. Comments to the rule indicate use of the following alternative dispute resolution techniques: mini-trials, summary jury trials, mediation, neutral evaluation, and non-binding arbitration.

16(c)(15) augments the court's power to limit, in advance, the amount of evidence a party may offer at trial, thus providing the parties with a better opportunity to determine priorities in advance of trial. Such limits, however, must be reasonable under the circumstances.

Finally, 16(c) also authorizes the court to require that a responsible representative of the parties be present or

available by telephone during a conference to discuss the possibility of settlement.

Rationale

This rule was revised to conform to the changes in the discovery process occasioned by Rule 26. In addition, it clarifies the court's role in the pretrial process, as well as the court's ability to control the flow of the trial, through settlement negotiations, limits on types of evidence and witnesses, and limits on the duration of the trial.

RULE 26

Overview

Rule 26 has been radically amended to provide for a "duty of mutual disclosure" by all parties. Unlike the practice under current Rule 26 in which each party is required to submit formal discovery requests to obtain even the most basic piece of information, the revision envisions early disclosure by all litigants of fundamental "core" information, including the identity of persons who are likely to possess discoverable information about a listing of all relevant documents and "tangible things," as well as a computation of any damage claims and copies of insurance agreements. In addition, this rule now specifically requires full disclosure regarding experts who will be used at trial, including a written report signed by the expert and a detailed listing of the expert's qualifications. The revision also provides for full pre-trial disclosure of witnesses

and exhibits, and requires that all information disclosed during discovery is now required to be updated periodically by the parties. Finally, the rule now states that prior to a scheduling order being entered, the parties are directed to meet to discuss their claims and the possibility of settlement.

Specific Changes

Pre-discovery planning meeting by the parties: 26(f) requires that in all cases not exempted by local rule or special order, the litigants must meet and plan for discovery. Following this meeting, the parties should submit their proposals for a discovery plan to the court and then begin formal discovery. This meeting must take place as soon as practicable, but no less than 14 days prior to when the Rule 16(b) scheduling order is due. See Form 35. Failure to attend one of these meetings may subject a litigant or his or her counsel to sanctions under Rule 37(g). Mandatory early pre-discovery disclosures: 26(a)(1) requires litigants to disclose basic material about the case, including the names of potential witnesses, a copy or description of relevant documentary evidence, a computation of all damage claims and the documents upon which the computation applicable insurance agreements. This information must be provided at or within 10 days after the initial meeting of the parties under 26(f).

In addition, 26(a)(2) requires at an appropriate time during the discovery period but not less than 90 days prior to trial, the parties must identify expert witnesses and provide a detailed written statement of the expert's testimony that may be

offered at trial and the reasons for that testimony. The report will disclose all evidence considered by the expert and any exhibits or charts that summarize or support the expert's opinions. In addition, the party must supply the expert's qualifications, including a list of all publications authored by the expert within the preceding ten years, the compensation paid to the witness, and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

26(b)(4)(A) authorizes the deposition of an expert witness after the required report under 26(a)(2) has been served. Consequently, the length or frequency of expert depositions may be lessened under this revision.

26(a)(3) imposes an additional duty to disclose, without request and not less than 30 days before trial, information customarily needed in final preparation for trial. This disclosure includes the names of all witnesses who will present substantive testimony at trial, including those who are not likely to be called, but are being listed to preserve the right to do so if needed because of developments during trial. In addition, the parties must designate which witnesses' trial testimony will be by deposition. A party intending to use an audio or video deposition at trial must provide the opposing party and the court with a transcript of the pertinent portions of such depositions. Finally, 26(a)(3)(C) requires complete disclosure of exhibits that may be offered as substantive

evidence.

Upon receipt of the final pretrial disclosures, other parties have 14 days to disclose any objections to the party's right to use the deposition testimony or to the admissibility of the documentary evidence (other than Rules 402 and 403 of the Federal Rules of Evidence.)

26(a)(4) sets forth the form of the disclosures, requiring that the initial and pretrial disclosures be in writing, signed, served and filed with the court, unless otherwise directed.

26(b)(2) allows the court to impose restrictions on discovery in addition to the new changes regarding presumptive limits. These restrictions can include limitations on length of depositions under Rule 30 and the number of requests for admission under Rule 36. Thus, the court will have greater control over the discovery process, and it will lessen the discovery abuses which can delay the action and increase the cost of litigation.

26(b)(4) provides that experts who are expected to be witnesses will be subject to deposition prior to trial. This rule is revised to follow the already-established practice of offering expert witnesses for deposition prior to trial.

Claim of Privilege: 26(b)(5) is a new provision requiring a party to notify other parties if it is withholding materials <u>otherwise subject to disclosure</u> under the rule or pursuant to a discovery request because it is asserting a claim of privilege or

work product. Withholding such materials without notification subjects the party to sanctions under Rule 37(b)(2) and may be viewed as a waiver of the privilege or protection. Pursuant to this rule, the party asserting a claim of privilege must provide sufficient information to allow the other parties to evaluate the applicability of the claimed privilege.

Under 26(c), a party may seek relief through a protective order if compliance with the disclosure requirement for providing information under this rule would be an unreasonable burden. However, before filing a motion for a protective order under this section, the movant must confer, by phone or in person, with the other affected parties in a good faith effort to resolve the discovery dispute without court intervention.

26(d) requires that, absent local rule amendment, stipulation, or court order, formal discovery should not begin until after the parties have had a Rule 26(f) discovery meeting.

26(e) provides that, at appropriate intervals, all disclosures made pursuant to Rule 26(a)(1-3) be supplemented.

26(g) simply requires a signature on the by the party or his or her attorney. The signature acts as certification that the information contained in the disclosure is complete and accurate as of the time it was made. Failure to comply with the rules subjects the signer to sanctions.

Rationale

The purpose behind this revision is to accelerate the exchange of basic information about the case and to eliminate the

time and expense of preparing formal discovery requests on that information. The rule is based upon the experience of district courts that have required disclosure of some of this information through local rules, court-approved standard interrogatories, and standing orders.

RULE 28

Overview and Rationale

Rule 28 has been revised to make use of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and other similar treaties that the United States may enter into regarding the taking of depositions abroad. The party taking the deposition is ordinarily obliged to conform to an applicable treaty (if an effective deposition can be taken by such internationally approved means, even though a verbatim transcript is not available or testimony cannot be taken under oath. In addition, the term"letter rogatory" has been replaced by the term "letter of request."

RULE 29

Overview and Rationale

Rule 29 has been revised to give greater opportunity for litigants to agree upon modifications to discovery procedures. The parties are encouraged to use cost and time efficient methods of discovery, as well as agree upon additional methods of discovery, without prior court approval. However, in the event a

stipulation which extends the time for responding to discovery would interfere with pre-set court dates for completing discovery, for hearing a motion, or for trial, court approval must be obtained by the parties.

RULE 30

Overview

Rule 30 provides for Rule 30 provides for a presumptive limit of ten oral depositions per side in an action. In addition, a party must obtain leave of court to conduct any depositions which exceed the presumptive limit or if the deposition will take place before the time specified in Rule 26(d). The rule also now specifically approves audio and video depositions, as well as depositions by telephone or satellite television (if taken pursuant to stipulation or court order).

By order or local rule, the court may limit the time permitted to conduct a deposition and may impose sanctions if it determines that a party or the deponent impedes or delays the deposition examination. The rule delineates an attorney's authority to object to deposition questioning, including any instructions to the deponent not to answer a question during the deposition.

Specific Changes

30(a)(2)(A) is new, providing a ten deposition limit on all defendants, plaintiffs, or third-party defendants, absent stipulation or court order. In multi-party cases, all parties on

one side are expected to confer and agree about which ten depositions are most needed. If the parties are unable to agree, the court can resolve the dispute or permit additional depositions.

30(a)(2)(B) is also new, requiring leave of court if any witness is to be deposed in the action more than once.

30(a)(2)(C) involves when depositions may be taken. Consistent with the mandate in Rule 26(d) that formal discovery not commence until the parties have met and conferred, a deposition may not be taken before that time, unless a witness is expected to leave the United States and will be unavailable for deposition.

30(b) specifically permits parties to record depositions by non-stenographic means. However, pursuant to Rule 26(a)(3)(B) and Rule 32(c) if the deposition will be offered as evidence in a subsequent court proceeding, a stenographic deposition will be required by the court. In addition, 30(b)(3) provides that any other party may arrange at his or her own expense for the deposition's recording by any other permissible means. Finally, Rule 30(b)(4) sets forth requirements for the person who records the deposition to ensure that the integrity of the deposition is not affected if it is taken by non-stenographic means.

Under 30(c), a witness is not automatically excluded from a deposition simply by request of a party. However, a potential deponent can be excluded by an order under Rule 26(c)(S) when appropriate.

30(d)(1) involves objections during depositions. Specifically, objections must be made concisely and in a non-argumentative and non-suggestive manner. In addition, objections should ordinarily be limited to those that might be waived if not made at the time, i.e., objections to form of the question or responsiveness of answer.

In only three situations may counsel direct a deponent not to answer a deposition question posed to him or her: If there is a claim of privilege against disclosure (i.e., work product); to enforce a court directive limiting the scope or length of permissible discovery; or to suspend a deposition to enable presentation of a motion for sanctions under paragraph (3).

30(d)(2) grants the court power to limit the length of depositions. Further, the court may impose costs on the individual who engages in tactics which unreasonably prolong a deposition. According to the rule's comments, these sanctions may be imposed on a party, counsel, or even a non-party witness.

30(e) requires the deponent to state prior to the deposition's completion whether he or she desires pre-filing review of the deposition. If review is requested, the deponent will be allowed 30 days to review the transcript or recording and indicate any changes in form or substance. Signature is only required if review is requested and changes are made.

Rationale

Rule 30 was revised to allow the court to maintain control over the discovery process and require the parties to

devise cost-effective discovery plans. In addition, the change permitting depositions by non-stenographic means acts as an endorsement of the current practice among litigants. In addition, the rules have been strengthened to reduce the frequency and length of interruptions occurring during the deposition process.

RULE 31

Overview and Rationale

Rule 31 now provides that a party must obtain leave of court to take a deposition upon written questions in four instances: (1) when the person to be questioned is imprisoned or (2) if the other parties will not agree by stipulation and (a) the proposed deposition would result in more than ten depositions by one side or (b) the person has previously been deposed or (c) the party is seeking a deposition before the time specified in Rule 26(d), i.e., prior to the Rule 26(f) conference. In addition, the time for developing cross-examination, redirect and recross questions has been shortened from 50 to 28 days. These changes are equivalent to the changes made to Rule 30.

RULE 32

Overview/Specific Changes

Rule 32(a) now provides that when a party receives less than 11 days notice of a deposition and it promptly files a motion for a protective order and cannot attend the deposition, the deposition cannot be used against the non-appearing movant.

According to the rule's comments, when the proposed deponent is the movant, he or she would not be subject to sanctions under Rule 37(d)(1).

Under Rule 32(c), a party may offer deposition testimony in any form at trial, stenographically or nonstenographically, but if offered in nonstenographic form, the offeror must provide the court with a transcript of those portions. On request of any party in a jury trial, deposition testimony offered for other than impeachment purposes must be presented in nonstenographic form, if available, unless ordered otherwise by the court.

Rationale

Rule 32 has been revised to collect provisions from former Rule 30 which were not contained in the revision of that rule. In addition, the rule has been revised to address the situation where a party receives minimal notice of a deposition and cannot receive a ruling on its motion for a protective order prior to the deposition. Finally, the revised rule recognizes the increased opportunity and use for audio and video recorded depositions set forth in Rule 30(b).

RULE 33

Overview

This rule has been revised to limit the number of interrogatories served by a party, in light of the disclosure requirements of Rule 26. In addition, a party must state objections to the interrogatory with specificity, and failure to

state a timely objection subjects it to waiver.

Specific Changes

33(a) places a limit of 25 on the number of interrogatories a party may serve without leave of court or written stipulation, although leave to serve additional depositions should be allowed when consistent with Rule 26. The rule all so forbids service of interrogatories prior to the meeting of the parties pursuant to Rule 26(f).

In the event a case is removed to federal court with outstanding interrogatories in excess of 25, the party must do one of three things: (1) seek leave of court to allow the additional interrogatories, (2) specify which 25 interrogatories are to be answered, or (3) resubmit interrogatories which comply with the rule.

33(b) emphasizes the duty of the responding party to provide full answers to interrogatories, to the extent not objectionable. In addition, the fact that additional time may be needed to respond to some questions should not justify a delay in responding to those questions that can be answered within the prescribed time.

33(b)(4) was added to clarify that objections must be specifically stated and that unstated or untimely grounds for objection ordinarily are waived.

The comments to this rule indicate that these provisions should be read in light of Rule 26(g), authorizing the court to impose sanctions on a party or attorney making unfounded

objections to an interrogatory.

Rationale

This rule was revised to reduce the frequency and increase the efficiency of interrogatory practice, especially in light of the disclosure requirements of Rules 26-37.

RULE 34

Overview and Rationale

Rule 34 has been revised to reflect the changes in Rule 26(d), preventing a party from seeking formal discovery prior to the meeting of the parties required in Rule 26(f). In addition, in conformity with the change made to Rule 33, this rule is clear that if a request for production of documents is objectionable in part, a party must produce the documents corresponding to the unobjectionable part. Finally, when a case is removed to federal court and contains outstanding requests for production, the time for response is measured from the date of the parties' Rule 26(f) meeting.

RULE 36

Overview and Rationale

This rule has been revised to reflect-the changes made by Rule 26(d), preventing a party from seeking formal discovery until after the parties have met and conferred pursuant to Rule 26(f).

RULE 37

Overview

Rule 37 has been revised to make a party who fails to make disclosures under-new Rule 26 subject to sanctions. Any party who fails to disclose the initial, core information will not be allowed to use the undisclosed information in any proceeding before the court. In addition to or in lieu of the aforementioned sanction, the court is authorized to impose other "appropriate sanctions," including requiring payment of reasonable attorneys fees caused by the failure, or notifying the jury of the party's failure to disclose the information. However, before bringing a motion under this rule, the moving party must certify that he or she has made a good faith effort to confer with the party failing to respond prior to seeking court intervention.

Specific Changes

37(a)(2)(A) is new, allowing a party dissatisfied with disclosure the opportunity to move to compel disclosure. 37(a)(2)(B) requires litigants to attempt to resolve discovery disputes through informal means before filing a motion with the court.

37(a)(3) specifies that a vague or partial discovery disclosure is equivalent to a total failure to disclose or respond.

Under 37(a)(4)(A) a party should not be awarded expenses for filing a motion to compel that could have been avoided by

conferring with opposing counsel, when the information sought is produced after the filing of a motion to compel but prior to a hearing on the motion.

37(c) provides a self-executing sanction for failure to disclose under Rule 26(a), without need for a motion under 30(a)(2)(A). 37(c)(1) prevents a party from using as evidence any witnesses or information that, without substantial justification, has not been disclosed as required by Rules 26(a) and 26(e)(1). This automatic sanction provides a strong inducement for disclosure of material that the disclosing party would expect to use as evidence in a court proceeding. This provision, however, does not apply to evidence being used for impeachment purposes. Since this provision does not encompass information which may support the opposing party's position and therefore might be concealed by the disclosing party, the rule also provides for other types of sanctions, including declaring specified facts as established, preventing contradictory evidence, or allowing the jury to be informed of the fact of non-disclosure.

Under 37(d), only a party with a pending motion for a protective order is excused for non-compliance with this section. If a party's motion for a protective order has previously been denied, that party cannot argue that its subsequent failure to comply is justified. In addition, parties should note that the filing of a motion for a protective order is not self-executing. Rather, the relief authorized under that rule depends on obtaining a court order to that effect.

Rationale

Rule 37 has been revised to reflect the revisions to rule 26 regarding disclosure. In addition, the rule reinforces a party's right to receive information through disclosure, and authorizes sanctions against a party who fails to comply with the disclosure requirements.

RULE 38

Overview and Rationale

The language of Rule 38 has been amended to clarify that for proper scheduling of cases, it is important that jury demands not only be served on other parties, but also be filed with the court.

RULE 50

Overview and Rationale

This technical amendment was added to clarify that judgment as a matter of law in jury trials may be entered against both plaintiffs and defendants on issues that do not entirely dispose of a claim or defense.

RULE 52

Overview and Rationale

The technical revision to Rule 52 is similar to the amendment to Rule 50, making clear that judgment as a matter of law in nonjury trials may be entered against both plaintiffs and

defendants on issues that do not entirely dispose of a claim or defense.

RULE 53

Overview and Rationale

This rule was revised change the term "magistrate" to "magistrate judge," in conformity with the Judicial Improvements Act of 1990.

RULE 54

Overview

Rule 54(d) has been amended to address issues involving litigation disputes over the award of attorneys-fees, where the prevailing party may be entitled to such awards.

Specific Changes

54(d) has been revised to create two sections on costs. 54(d)(1) addresses taxation of costs other than applications for attorneys' fees, while 54(d)(2) establishes a procedure for bringing claims for attorneys fees. However, 54(d) does not apply to fees recoverable as an element of damages, nor does it apply to awards of attorneys' fees as sanctions.

54(d)(2)(B) establishes a time limit of 14 days after final judgment for filing motions for attorneys' fees, unless the court or a statute provides otherwise. This provision assures that the opposing party is informed of the claim for attorneys' fees prior to the last date that the party may file notice of

appeal. In addition, it allows the court to resolve fee disputes while the information relating to the attorneys' performance is still fresh in the court's mind.

Filing a motion for attorneys' fees does not affect the finality or appealability of the judgment. However, Rule 58 now permits the court to suspend the finality of the judgment to resolve the motion for fees.

The rule requires that the moving party notify the court of the existence of the claim for attorneys' fees and amount of such fees. It does not require that the motion be supported with evidentiary material to support the claim at the time it is filed, although this material must be filed eventually.

If directed by the court, the moving party must disclose the terms of a fee agreement for the services for which the claim is made -- whether between attorney/client, between co-counsel, or between adversaries made in partial settlement of a dispute where the settlement must be implemented by the court.

54(d)(2)(C) provides that the non-moving party shall have the opportunity to present "adversary submissions" with respect to the motion for fees, thus assuring that the parties are able to provide all information bearing on the court's evaluation of the legal services at issue. This does not guarantee a right to an evidentiary hearing in every case. In addition, the court is explicitly authorized to rule on the issue of liability before receiving submissions addressing the amount of the award. Finally, fee awards should be made in a separate judgment in

which the court sets forth its findings of fact and conclusions of law, as they are subject to review by the appellate courts. 54(d)(2)(D) explicitly authorizes the court to establish local rules which promote efficient and fair resolution of fee claims. The rule also allows the court to refer fee issues to a special master for a determination. 54(d)(2)(E) specifically excludes the award of attorneys fees as sanctions.

Rationale

This rule clarifies and harmonizes the procedures that have been developed in case law and local rules to provide a mechanism for dealing with cases involving disputes over attorneys' fees, subsequent to the final judgment in an action.

RULE 58

Overview and Rationale

Rule 58 now allows the court to delay the finality of a judgment for appellate purposes, under revised Federal Rule of Appellate Procedure 4(a), until a fee dispute is decided. To accomplish this result requires entry of an order by the district court prior to the time a notice of appeal becomes effective. If the order is entered, the motion for attorneys' fees is treated like a motion under Rule 59.

RULE 71A

Overview and Rationale

Rule 71A has been amended to delete references to Rule 4.

RULE 72

Overview and Rationale

This rule was revised to change the term "magistrate" to "magistrate judge," in conformity with the Judicial Improvements Act of 1990.

RULE 73

Overview and Rationale

Rule 73 was also revised to change the term "magistrate" to "magistrate judge," in conformity with the Judicial Improvements Act of 1990. The rule also specifies that when the parties are reminded of the availability of a magistrate judge to exercise jurisdiction over civil matters by consent of the parties, the parties should be advised that withholding consent will have no adverse substantive consequences. They also may be advised if withholding consent would have the adverse procedural consequence of delaying trial of their action. See Revised Forms 33, 34 and 34A.

RULE 74

Overview and Rationale

This rule was revised to change the term "magistrate" to "magistrate judge," and the term "judge" to "district judge," in conformity with the Judicial Improvements Act of 1990.

RULE 75

Overview and Rationale

This rule was revised to change the term "magistrate" to "magistrate judge," in conformity with the Judicial Improvements Act of 1990.

RULE 76

Overview and Rationale

This rule was revised to change the term "magistrate" to "magistrate judge," in conformity with the Judicial Improvements Act of 1990.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Plaintiff,	:	
vs.	:	CIVIL ACTION _____
Defendant.	:	

FRCP 16(b) DISCOVERY AND SCHEDULING ORDER

After consideration of the responses and pleadings of the parties and pursuant to Fed.R.Civ.P. 16(b), the following scheduling order is issued:

1. DISCOVERY COMPLETION DATE. All discovery must be completed on or before _____. REQUESTS FOR EXTENSION WILL BE VIEWED WITH GREAT DISFAVOR AND WILL NOT BE CONSIDERED EXCEPT UPON A SHOWING (1) THAT EXTRAORDINARY CIRCUMSTANCES REQUIRE IT AND (2) THAT THE PARTIES HAVE DILIGENTLY PURSUED DISCOVERY.

For all cases, "completed" means that all discovery depositions have been taken, interrogatories have been filed and answered, requests for production have been filed and responded to, physical inspections and medical examinations have been concluded, and motions to compel have been filed.

2. AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES. Amendments to the pleadings of any party to this action and the joinder of other parties must be accomplished on or before ____.

3. DISCOVERY LIMITS. After consideration of the nature and size of the case, the expense of litigation, and pursuant to Rules 26(a), 26(c)(1-3), and 26(d) of the Federal Rules of Civil Procedure, it is ORDERED that, absent leave of court upon motion for good cause, discovery is hereby LIMITED as follows:

a. Not more than ___ interrogatories may be served by each party;

b. Not more than ___ depositions may be taken by each party;

c. Not more than ___ requests for admissions may

be served by each party;

d. Not more than ___ set(s) of requests for production of documents may be served by each party. Subpoenas duces tecum to a party ordering such party to produce documents or things at trial shall not be used to circumvent the limitations placed on discovery.

In applying these limits, (1) any separate part or subpart of an interrogatory or request for admission will be counted as one interrogatory or request, and (2) all parties represented by same counsel will be treated as a single party.

4. DISCOVERY CONFERENCE REQUIRED. Unless a shorter time is permitted by the Court, at least fourteen (14) days before filing a motion pursuant to Fed.R.Civ.P. 35, a motion to determine sufficiency pursuant to Fed.R.Civ.P. 36(a), a motion to compel pursuant to Fed.R.Civ.P. 37(a)(2) or a motion for protection order pursuant to Fed.R.Civ.P. 26(c), counsel for the moving party shall confer with counsel for the opposing party in a good-faith effort to resolve by agreement the issues in dispute. Unless the motion contains (1) a certification by the moving party that such a conference has taken place but counsel have been unable to resolve the discovery dispute, or (2) if a conference has not been held, a certification listing what reasonable efforts have been made to hold such a conference with the opposing party, the motion shall be struck by the Magistrate for failure to comply with this Order.

5. DISCOVERY MOTIONS. Motions for protective order pursuant to Fed.R.Civ.P. 26(c), motions to determine sufficiency pursuant to Fed.R.Civ.P. 36(a), and motions to compel discovery pursuant to Fed.R.Civ.P. 37(a)(2) shall be brought in a timely manner so as to allow sufficient time for the completion of discovery according to any schedule set by the Court. Such motions shall quote in full (1) each interrogatory question, request for admission or request for production to which the motion is addressed, or otherwise identify specifically and succinctly the discovery to which objection is taken or from which a protective order is sought, and (2) the response or the objection and grounds therefor, if any, as stated by the opposing party. Unless otherwise ordered by the Court, the complete transcripts or discovery papers need not be filed with the Court unless the motion cannot be fairly decided without reference to the complete original.

Unless within eleven (11) days after the filing of a discovery motion the opposing party files a written objection thereto, he shall be deemed to have waived objection and the Court may act on the motion. Every party filing an objection shall file with the objection a separate memorandum of law, including citations of supporting authorities and any affidavits

and other documents setting forth or evidencing facts on which the objection is based.

6. SUMMARY JUDGMENT. Motions for summary judgment should be filed not later than 30 days after completion of discovery.

7. LIMITATION OF NUMBER AND LENGTH OF BRIEFS. Unless prior permission of this Court is given, briefs filed in support of or in opposition to any motion shall not exceed thirty (30) pages in length. The Court will allow one reply brief by the movant which does not exceed fifteen (15) pages in length. Any necessary attachments to the brief do not count toward the page limitations imposed herein. The Court looks with disfavor upon motions to exceed the page limitation and will only grant such a motion for extraordinary and compelling reasons.

8. SETTLEMENT. Early settlement negotiations are encouraged. Compensatory damages claimed should be itemized immediately. Ninety percent (90%) of the cases filed are settled. Why not this one?

9. LOCAL RULES. All parties are reminded that the Local Rules of this district contain important requirements concerning motions to dismiss and for summary judgment, class actions, and other matters. They are reprinted in ALABAMA RULES OF COURT (West Publishing Co.) and ALABAMA RULES ANNOTATED (The Michie Company), but are amended from time to time. A current version may be obtained from the Clerk. Local Rule 17 proscribes the filing of most discovery materials.

DONE this ___ .

BERT T. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE

APPENDIX H

ALTERNATIVE DISPUTE RESOLUTION RULES
Eastern District of Pennsylvania

SUPPLEMENTAL REFERENCES ON COURT MANAGEMENT

ALTERNATIVE DISPUTE RESOLUTION RULES (MEDIATION)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Reporters' Note: The Alternative Dispute Resolution rules of procedure of the United States District Court for the Eastern District of Pennsylvania were made available for review by Civil Justice Reform Act Advisory Groups. Because this Advisory Group has recommended that the District Court for the Southern District of Alabama consider the feasibility of mediation as a form of alternative dispute resolution, Eastern District of Pennsylvania Rule 15 on mediation procedures is presented here for information.

Rule 15 - Court-Annexed Mediation (Early Settlement Conference)

Purpose--The court adopts this Rule for the purpose of determining whether a program of court-annexed mediation will provide litigants with a speedier and less expensive alternative to the burdens of discovery and the traditional courtroom trial. As hereinafter provided, commencing January 1, 1991, (and continuing until further action by the court) those cases which have been assigned an "odd" number by the Clerk of the Court will be placed in the program with the understanding that thereafter a study will be made to determine whether this program should be continued in the interest of providing a more expeditious resolution of litigation.

1. Certification of Mediators

(a) The Chief Judge shall certify as many mediators as he determines to be necessary under this rule.

(b) An individual may be certified to serve as a mediator if: (1) he/she has been for at least fifteen (15) years a member of the bar of the highest court of a state or the District of Columbia; (2) he/she is admitted to practice before this court; and (3) he/she is determined by the Chief Judge to be competent to perform the duties of a mediator.

(c) Any member of the bar possessing the qualifications set forth in subsection (b), and desiring to become a mediator, shall complete the application form obtainable in the office of the Clerk and when completed shall file it with the Clerk of Court who shall forward it to the Chief Judge of the Court for his determination as to whether the applicant should be certified.

(d) Each individual certified as a mediator shall take the oath or affirmation prescribed by Title 28, U.S.C. §453 before serving as a mediator.

(e) A list of all persons certified as mediators shall be

(e) A list of all persons certified as mediators shall be maintained in the office of the Clerk.

(f) A member of the bar certified as a mediator may be removed from the list of certified mediators for cause by a majority of the judges of this Court.

2. Compensation and Expenses of Mediators

Mediators shall receive no compensation for services and shall not be reimbursed for expenses. The services and expenses of a mediator shall be considered pro bono service in the interest of providing litigants with a speedier and less expensive alternative to the burdens of discovery and a courtroom trial.

3. Cases Eligible for Mediation

The Clerk of Court shall, as to all cases filed on or after January 1, 1991, designate and process for mediation all civil cases to which the Clerk of this Court has assigned an "odd" (not "even") number, except (1) social security cases, (2) cases in which a prisoner is a party, (3) cases eligible for arbitration pursuant to Local Civil Rule 8, (4) asbestos cases, and (5) any case which a judge determines, sua sponte, or on application by an interested party (including the mediator), is not suitable for mediation.

4. Scheduling Mediation Conference

[Reporters' Summary: Within 30 days from the date of the defendant's first appearance, the mediation conference shall be scheduled before a mediator selected at random from a list of lawyers certified as mediators. Notice of the conference shall be sent by the mediation clerk to counsel and any unrepresented party. The mediation clerk shall send the mediator copies of the complaint(s) and any responsive motions or pleadings that have been filed. Although the mediator has the authority to change the date and time of the conference, any change beyond 15 days after the date set forth in the original notice must be approved by the judge to whom the case is assigned. Mediators may be disqualified for bias or prejudice, and shall disqualify themselves in any action in which they would be required under Title 28, U.S.C. §455 to disqualify themselves if they were a justice, judge, or magistrate.]

5. The Mediation Conference

(a) The mediation conference shall take place on the date and at the time set forth in the notice pursuant to [Rule 4] or as changed pursuant to [Rule 4]. The mediation conference shall take place in a courthouse, a courtroom in the United States Custom House, or at such other place designated by the mediation clerk.

(b) Counsel primarily liable for the case and any unrepresented party shall attend the mediation conference, and shall be prepared to discuss: (1) all liability issues; (2) all damages issues; (3) all equitable and declaratory remedies if such are requested; and (4) the position of the parties relative to settlement. Counsel shall make arrangements with the client to be available by telephone or in person for the purpose of discussing settlement possibilities. Willful failure to attend the mediation conference shall be reported to the Court and may result in the imposition of sanctions.

(c) All proceedings at any mediation conference authorized by this Rule (including any statement made by a party, attorney, or other participants) shall not be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party shall be bound by anything done or said at the conference unless a written settlement is reached and signed by the parties or their counsel.

(d) In the event the mediator determines that no settlement is likely to result from the mediation conference, he shall terminate the conference and promptly thereafter send a report to the mediation clerk and the judge to whom the case is assigned stating there has been compliance with the requirements of this Rule, but that no settlement has been reached. In the event, however, that a settlement is achieved at the mediation conference, the mediator shall send a report to the mediation clerk and the judge to whom the case has been assigned stating that a settlement was achieved.

(e) No one shall have a recording or transcript made of the mediation conference.

(f) This rule shall not be construed as modifying the provisions of of Federal Rule of Civil Procedure 16 or Local Civil Rule 21.

6. Revisions to this Rule

The court may, in order to further the purposes of court-annexed mediation, revise the text of this rule after consultation with the Federal Courts Committee of the Philadelphia Bar Association and the Lawyers' Advisory Committee for this court.

SUPPLEMENTAL REFERENCES

Reporters' Note: The following annotations are of articles and documents provided to the Advisory Group for informational purposes during the course of its study of federal court case management in the Southern District of Alabama. The full text of each is available through the reporters/consultants to the Advisory Group.

Dayton, Kim. "The Myth of Alternative Dispute Resolution in the Federal Courts," 76 Iowa Law Review 889 (1991).

The author questions the popular perception that alternative dispute resolution (ADR) is the panacea for many of the federal court problems with which Congress was concerned in enacting the Civil Justice Reform Act (CJRA). Dayton first suggests cases that can be resolved quickly without a jury and federal judge perhaps do not belong in federal court at all. Secondly, the author maintains, the federal court should emphasize the identification of "settlement events," such as the setting of early trial dates, to help close cases. Dayton concludes that with the implementation of the CJRA, more information will be gathered on ADR that will lead to more intense scrutiny of the real value of such programs in improving the efficiency of federal civil litigation.

Pointer, Hon. Samuel C., "Myths and Fantasies about Case Management," address delivered at the Annual Convention of the International Society of Barristers, in 26 International Society of Barristers Quarterly 405 (October, 1991).

The thesis of Judge Pointer, Chief Judge of the United States District Court for the Northern District of Alabama, is that

in addition to being "overdiscovered," cases are "overmanaged" by judges. Overpreparation, such as in dealing with pretrial evidentiary questions, makes cases overly expensive and overly time-consuming, he suspects. He notes that the work of the CJRA advisory groups will help the district courts take a fresh look at how they are moving cases toward final disposition. Judge Pointer recommends consideration of increased emphasis on early disclosure of essential information and more limitations on depositions as two means of improving case management.

Civil Discovery Committee, Introduction to Civil Discovery Practice in the Southern District of Alabama. 1984.

This 31-page document was developed by a committee of trial lawyers practicing in the United States District Court for the Southern District of Florida. Although the document does not have the status of a law or binding rule, it does offer a general, informal guide to the interpretation and application of civil discovery rules in the district. Trial lawyers and judges endeavored to delineate local custom and usage that have developed in several recurring discovery situations, explaining local practice in situations that may be unclear under the Federal Rules of Civil Procedure and case law. This document is available through the Office of the Clerk of the Federal District Court.

Members of the Civil Discovery Committee included: Louis E, Braswell (Chair), David Bagwell, Billy C. Bedsole, James U. Blacksher, Robert T. Cunningham, Jr., Robert P. Denniston, A.

Danner Frazer, Alex T. Howard, Jr., John N. Leach, Jr., Champ Lyons, Jr., Stephen C. Olen, W. Boyd Reeves, and Patrick H. Sims.

APPENDIX I

Mobile County Circuit Court Life Expectancy Analysis

The Life Expectancy analysis was performed on data provided by Susan F. Wilson, Clerk of the Mobile County Circuit Court. The data were from October, 1988, through May, 1992. The life expectancy was calculated exactly as with the Federal Court data. The data did not have cases identified by nature. They were categorized into Criminal and Civil cases. Domestic Relations, Juvenile, and Child Support cases were not included in this analysis since no Federal Court equivalents exist.

All Cases Life Expectancy Analysis

Graph 1 presents the life expectancy of all cases in the Mobile County Circuit Court. There appears to be a slight downward trend in life expectancy for the past 20 months. However, as Table 1 indicates, there is no statistically significant trend in life expectancy. This indicates that the life expectancy is remaining unchanged over time.

Table 1
Linear Regression Model
Mobile County Circuit Court Life Expectancy
All Cases

Constant	10.08429
Std Err of Y Est	4.53581
R Squared	0.02576
No. of Observations	55
X Coefficient	-0.04561
Std Err of Coef.	0.03852
Calc T-Val	-1.18393
P-Val	> .10

Felony Cases Life Expectancy Analysis

The felony cases life expectancy is depicted in Graph 2 and the regression analysis is presented in Table 2. The interpretation is similar to the All Cases analysis above. No statistically significant trend exists. There appears to be no change in the life expectancy of felony cases in the County Circuit Court.

Table 2
Linear Regression Model
Mobile County Circuit Court Life Expectancy
Felony Cases

Constant	11.14222
Std Err of Y Est	6.92096
R Squared	0.01167
No. of Observations	55
X Coefficient	-0.04650
Std Err of Coef.	0.05878
Calc T-Val	-0.79119
P-Val	> .10

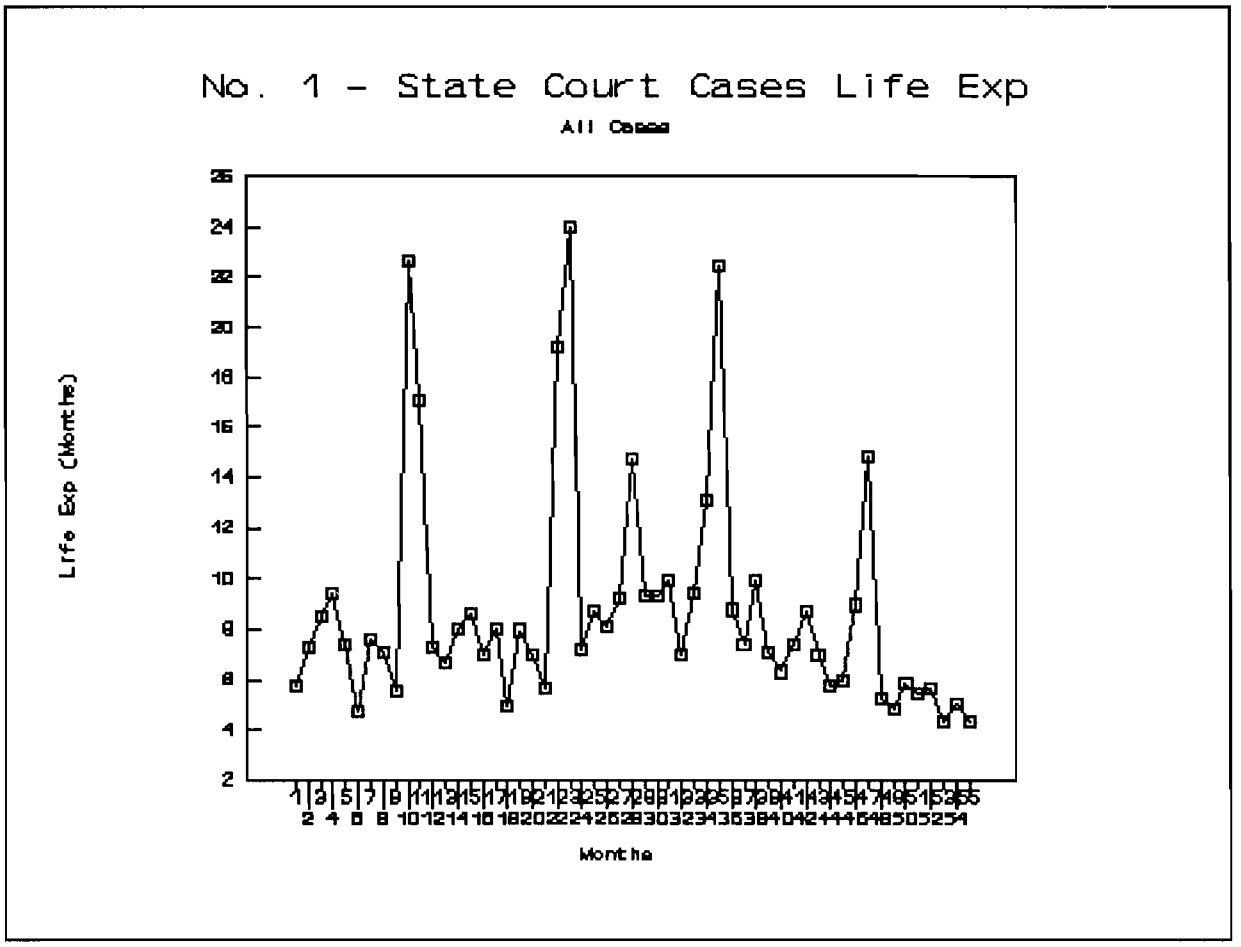
Civil Cases Life Expectancy Analysis

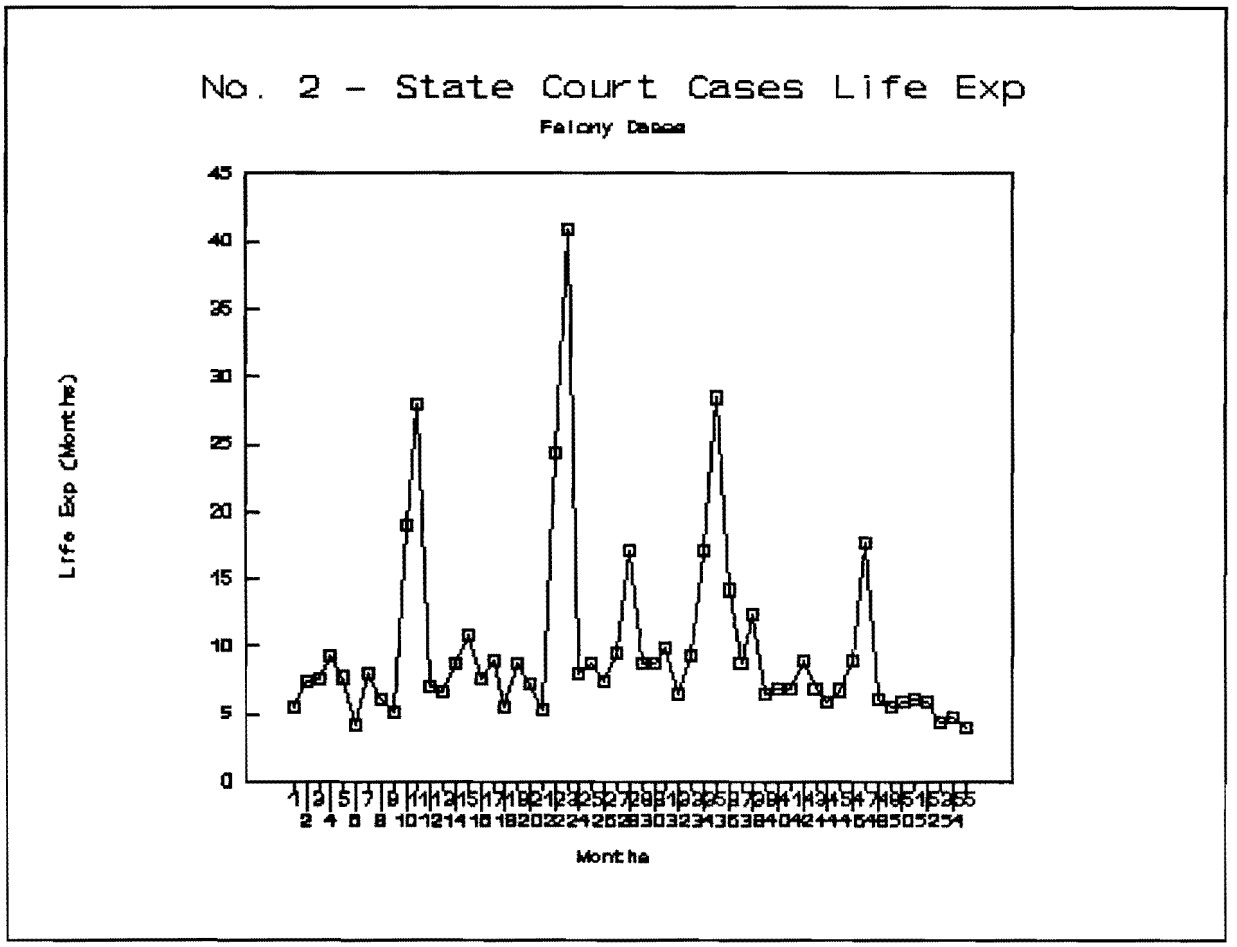
Graph 3 and Table 3 illustrate the life expectancy analysis of the civil cases. A definite downward trend in life expectancy is apparent. The regression analysis indicates a statistically significant downward trend. The life expectancy of the civil cases is dropping by an average of .094 months per month. This significant drop indicates that further investigation into the management of the civil cases by the County Circuit Court may be warranted. If the county court cases are similar in nature and management to Federal cases, and if the County Circuit Court administrator is managing these cases in a particular way, the

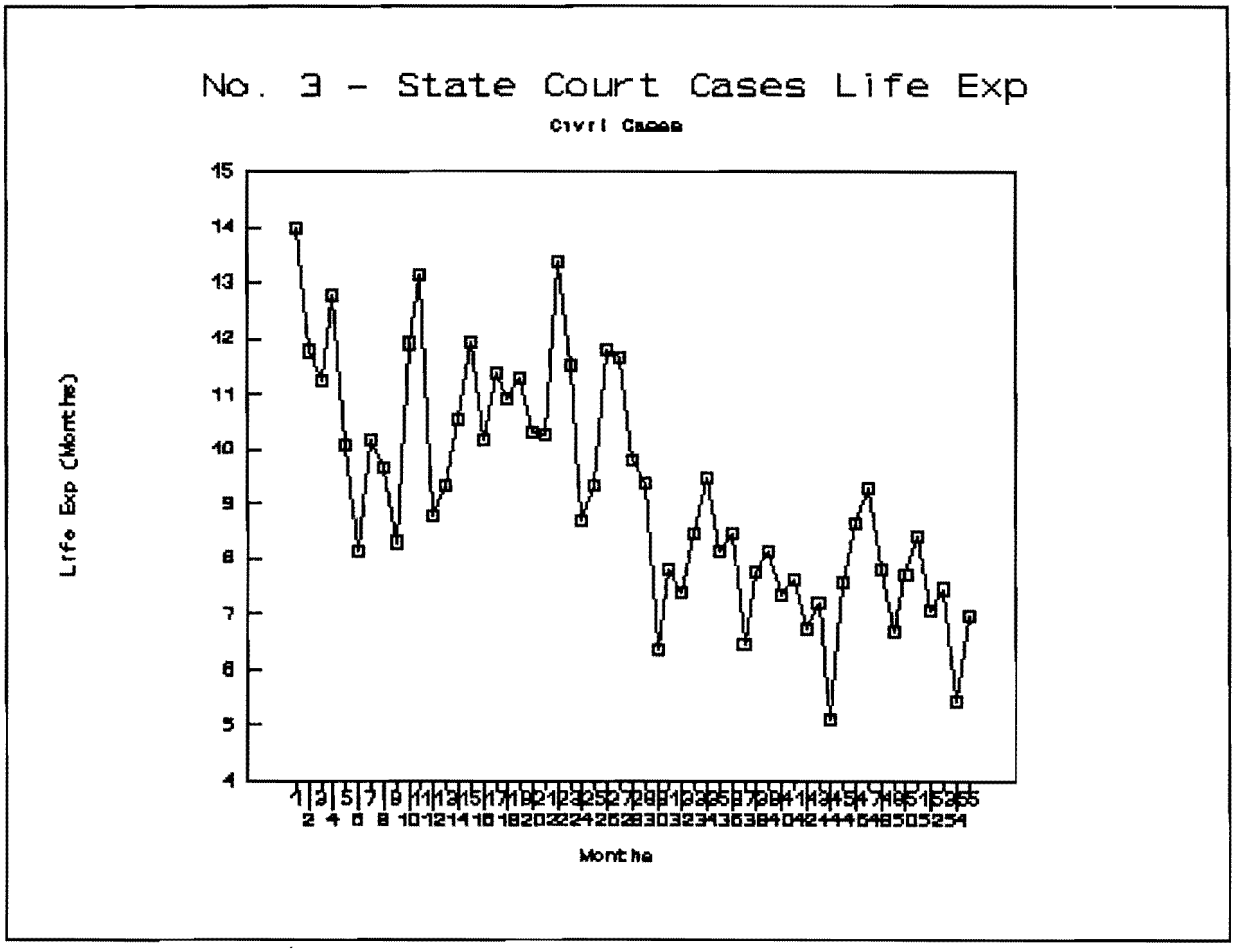
management techniques may be useful for managing similar cases on the Federal docket.

Table 3
Linear Regression Model
Mobile County Circuit Court Life Expectancy
Civil Cases

Constant	11.87579
Std Err of Y Est	1.43913
R Squared	0.53199
No. of Observations	55
X Coefficient	-0.09488
Std Err of Coef.	0.01222
Calc T-Val	-7.76183
P-Val	< .01


No. 1 - State Court Cases Life Exp
All Cases
Life Exp (Months)
Months


No. 2 - State Court Cases Life Exp
Felony Cases
Life Exp (Months)
45
40
35
30
25
20
15
10
5
0
Months


No. 3 - State Court Cases Life Exp
Civil Cases
Life Exp (Months)
15
14
13
12
11
10
9
8
7
6
5
4
Months

Interview with Presiding Judge Braxton L. Kittrell, Jr., Circuit Court of Mobile County, Mobile, Alabama, September 16, 1992, by Jack O'Brien on behalf of the Advisory Group.

RE: CJRA Management Plan

Mr. O'Brien briefed Judge Kittrell as to the function of the Advisory Commission and the member thereof, including the two professors (Robert A. Shearer, J.D., and Warren A. Beatty, Ph.D., of the Department of Management, University of South Alabama) who had been hired to format a plan for the United States District Court, Southern District of Alabama.

The Advisory Committee felt it would be beneficial to speak with Presiding Judge Kittrell relative to the handling of Speedy Trial and related cases, both civil and criminal, by the Circuit Court of Mobile County.

Judge Kittrell stated that he had visited several other courts in the United States, among which was that in Phoenix, Arizona, whose system had been adopted three to four years ago by four of the Circuit Court Judges in Mobile (three other judges declined). A copy of their plan is attached. Judge Kittrell finds that more and more civil cases are being settled. There is a greater number of cases filed; however, fewer are being tried. Cases are tried on the basis of a Complaint and Defendant's Answer. If there is a modification that is not a change of the basic complaint, it is his practice to permit it--flexibility is important in trying to obtain justice for all parties.

The Individual Calendar System and backup judges are the necessary foundation for responsibility in handling cases, with backup judges handling the overflow from other judges. The average case is disposed of within one year from date of filing.

The Circuit Court operates on motion dockets--dispositive motions are usually set for hearing, and on certain occasions other types of motions are set, depending upon the individual judge. Judge Kittrell expressed the opinion that if motions can be set before trial, the chances of settlement before coming to trial are greater. Pretrial Conferences are not generally used, and if so, would be just before trial and last approximately five minutes. If necessary to continue a case, it was considered more efficient for both judges and attorneys that it be for a short period, perhaps 30 days.

In criminal cases, most come to trial within 60/90 days of indictment. The circuit court has problems with the time frames in regard to Grand Juries. Judge Kittrell felt that on an average criminal cases heard within the Circuit Court were of shorter duration than in Federal Court. The total cases disposed of by trial by the Circuit Court of Mobile County, including

civil and criminal cases, was 286 in 1989; 266 in 1990; and 227 in 1991.

Judge Kittrell stated that he would like to have a drug court as exists in some other cities for the purpose of following up and dealing with the drug problems at the addict level rather than the dealer area which he intimated was already being taken care of.

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

_____

_____
Plaintiff(s)

Civil Action No._____

vs.

Date Complaint Filed_____

_____

_____
Defendant(s)

ASSIGNMENT TO EXPEDITED CASE MANAGEMENT SYSTEM AND GENERAL PRETRIAL ORDER

ASSIGNMENT TO SYSTEM

This case has been placed in the Expedited Case Management System which is designed to dispose of a case within 12 months after filing.

OBJECTION TO INCLUSION IN SYSTEM

If a party to this cause believes that the cause is extremely complex or will involve unique problems and will be impossible to prepare for trial within the time frame of the system, he may, within 40 days after the date of this order, or if the party has not been served at the date of this order, within 40 days after service, file a motion requesting that the cause not be included in the system and that the parties be allowed additional time to prepare the cause for trial. A motion filed later than the aforesaid 40 days will not be considered by the Court. Oral argument may be requested on an exclusion motion. If a cause is excluded from the system by the Court, a discovery schedule will be set by the Court after conference with the parties. If a case is so excluded the general pre-trial portion of this order will remain in effect unless specifically altered by the court.

DISCOVERY

Unless the Court sets a shorter time, all pre-trial discovery shall be completed within 270 days after filing of the complaint unless the party filing the Motion to Set and Certificate of Readiness requests an additional period of time,

not to exceed 60 days, and certifies that all discovery will be concluded within that time. Notwithstanding the foregoing, for good cause shown, the Court may permit, or the parties may agree, that additional discovery procedures be undertaken anytime prior to trial, so long as such discovery can be completed so as not to require a continuance of the trial setting.

MOTION TO SET AND CERTIFICATE OF READINESS

Counsel for the plaintiff shall, and counsel for any other party may, file a Motion to Set and Certificate of Readiness, which shall be filed not later than 270 days after the filing of the complaint. If such a motion is not filed by the 280th day, the Court will place the case marked "To Be Dismissed" on a disposition docket as near as possible to the 300th day and send notice of such to all parties. If a Motion to Set and Certificate of Readiness is not received by the Court prior to the disposition date, the case will be dismissed.

The Motion to Set and Certificate of Readiness will be in a form similar to that available in the clerk's office and will contain the following information:

(1) The date the complaint was filed;
(2) That the issues in the case have been defined and joined;
(3) That all discovery has been completed or will be completed within 60 days after the filing of the Certificate of Readiness;
(4) That a jury trial has or has not been demanded;
(5) The expected length of the trial expressed in hours and/or days;
(6) The names, addresses and telephone numbers of the parties or their attorneys responsible for the litigation;
(7) Whether the cause is entitled to a preference or priority for trial by reason of some statute or rule, citing the particular status or rule;
(8) That the Court's general pre-trial portion of this order has been complied with including supplementation of discovery.

The filing by plaintiff of a Motion to Set and Certificate of Readiness constitutes the voluntary dismissal of all fictitious parties whose true names have not been substituted.

CONTROVERTING CERTIFICATE

Within 14 days after a Motion to Set and Certificate of Readiness has been filed, counsel for any other party may file a Controverting Certificate specifying the particular statements

contained in the Certificate of Readiness to which objection is made, and the reasons therefore. Oral argument may be requested. The Court shall thereupon enter an order placing the case on the Active Calendar either immediately or, where good cause is shown, at a specified later date.

ACTIVE CALENDAR

Fourteen days after a Motion to Set and Certificate of Readiness is filed, if a Controverting Certificate has not been filed, the case shall be placed on the Active Calendar, unless otherwise ordered by the Court.

SETTING FOR TRIAL

Unless specifically set by the Court, cases on the Active Calendar shall be set for trial generally in the same order as they came on the Active Calendar and as soon as possible. Preference shall be given to cases which by statute, rule or order of the Court are entitled to priority. Counsel shall be given at least sixty days notice of the trial date.

DELAY

When a case has been set for trial, no postponement of the trial will be considered by the Court except on a written motion substantially in the form previously approved by the Court. (Obtain from the Court a Request for Delay form).

CONFLICTS

Upon learning of a scheduling conflict between this case setting and a case setting in the U.S. District Court, the Circuit Court or other court, affected counsel shall promptly notify the judges involved, who shall, if necessary, confer personally or by telephone and resolve the conflict.

NOTIFICATION OF SETTLEMENT

In order to provide other litigants with prompt trial settings all attorneys shall notify the Court of settlement, regardless of the status or stage of the case (discovery stage, active calendar or trial calendar).

GENERAL PRE-TRIAL ORDER

To expedite pre-trial and trial procedure, it is ORDERED by the Court that the following will apply:

1. EXHIBITS, DOCUMENTS AND PHYSICAL EVIDENCE, GENERALLY

a. Each party shall make all documents, exhibits and

physical evidence, or copies thereof, expected to be used in the case in chief available to the other parties, not less that 21 days prior to trial, for inspection and copying. The same shall then be authenticated and admitted into evidence without further proof, unless written objections to any such documents or exhibits be made to the court not less than 14 days prior to trial specifying the grounds of objection in opposition to the genuineness and relevancy of the proposed document, exhibit or physical evidence. The requirement does not apply to documents, exhibits and physical evidence used solely as impeachment evidence.

b. Documents, exhibits or physical evidence not timely exhibited to or made available to other parties prior to trial under this Order will not be admitted into evidence at the trial unless solely for impeachment purposes or unless the ends of justice so require.

c. Documents, exhibits or physical evidence so admitted hereunder shall be presented to the court reporter for marking in evidence prior to trial.

2. DOCTOR, HOSPITAL AND MEDICAL EXPENSES

a. If applicable, all doctor, medical and hospital bills shall be sent to or made available to all parties not less that 21 days before trial and shall be admitted in evidence as reasonable without further proof, unless written objection to any such bills be made to the Court not less that 14 days before trial specifying the grounds for objection.

b. Any such bills not timely exhibited to the other parties will not be admitted in evidence at trial unless the ends of justice so require.

c. The bills so admitted shall be presented to the court reporter for marking in evidence prior to trial.

3. SPECIAL DAMAGES

a. All parties seeking special damages shall furnish the other parties with a list thereof not less than 21 days before trial. Written objections thereto may be made not less than 14 days before trial specifying grounds of objection.

b. Evidence of special damages claimed, but not timely exhibited to other parties, will not be admitted into evidence unless the ends of justice so require.

4. AGENCY-TIME AND PLACE-DUTY

a. Agency and the time and place of the incident

involved, if alleged in the complaint, and, if a negligence case, the existence of a duty, are admitted and the parties are deemed correctly named and designated unless specifically denied by answer of unless written objection is made not less than 14 days before trial. The objections shall include the correct name and entity and/or the grounds relied on.

5. EXPERTS

a. Unless previously obtained by discovery, each party will furnish to all other parties the names, addresses and qualifications of all expert witnesses expected to testify, together with a brief summary of their opinions. Such disclosure of experts shall be made by the party filing the Motion to Set and Certificate of Readiness not later than 14 days after the filing of the Motion to Set and Certificate of Readiness.

b. Disclosure of experts in cases not included in the Fasttrack System shall be made by all parties not less than 60 days before trial.

c. Unless written objection to the qualifications of an expert is made not later than 30 days before trial, stating grounds, the qualification of such expert will be admitted.

d. Upon calling an expert to testify at trial, the attorney may state to the Court and jury the name, address and summary of the qualifications of the expert.

6. JURY INSTRUCTIONS

If the case is to be tried by a jury, requested written charges shall be submitted to the court not later than the close of the plaintiff's case, subject to supplementation during the course of the trial on matters which could not be reasonably anticipated. Each requested charge will be typed on letter size paper and identified by the party's last name and shall be numbered.

7. JURY SELECTION

Before the commencement of trial, the parties will furnish or advise the Court, outside the presence of the jury, the names of all insurance companies involved and any special voir dire questions for the purposes of qualifying the jury.

8. DUTY TO SUPPLEMENT DISCOVERY

All parties are under a duty to supplement responses to discovery as provided by Rule 26(e)(3) ARCP which should be done not less than 30 days before trial.

It is further ORDERED by the Court that the Court will reconsider any portion of the General Pre-Trial Order upon timely application by any party.

Done this the _____ day of _____, 19 ___.

_____
Circuit Judge, Braxton L. Kittrell, Jr.